CRIMINAL YEAR SEMINAR

April 15, 2016 - Tucson, Arizona
May 6, 2016 - Phoenix, Arizona
May 13, 2016 - Chandler, Arizona

2015 CASE CITATIONS
ARIZONA EVIDENCE REPORTER
CONSTITUTIONAL LAW REPORTER - UNITED STATES
CONSTITUTIONAL LAW REPORTER - ARIZONA
CRIMINAL CODE REPORTER
CRIMINAL RULES REPORTER
FUNDAMENTAL ERROR REPORTER

Prepared By:

The Honorable Crane McClennen

Judge of the Maricopa County Superior Court
Phoenix, Arizona

Distributed By:

ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL
1951 W. Camelback Road, Suite 202
Phoenix, Arizona 85015

And

CLE WEST
5130 N. Central Ave
Phoenix, AZ 85012

2016 CRIMINAL YEAR SEMINAR
2015 Case Citations—Alphabetically

C = Constitutional Law Reporter
c = Criminal Code Reporter
r = Criminal Rules Reporter
e = Arizona Evidence Reporter

ar = appellate review
fe = fundamental error
he = harmless error
se = structural error

Allen v. Sanders, 237 Ariz. 93, 347 P.3d 30 (Ct. App. 2015).Ccr
Burch & Cracchiolo v. Myers (Lund), 237 Ariz. 369, 351 P.3d 376 (Ct. App. 2015).e
Busso-Estopellen v. Mroz, 238 Ariz. 553, 364 P.3d 472 (2015).
City of Scottsdale v. State, 237 Ariz. 467, 352 P.3d 936 (Ct. App. 2015).c
Desert Palm Surg. Grp. v. Petta, 236 Ariz. 568, 343 P.3d 438 (Ct. App. 2015).e
Dobson v. McClennen, 238 Ariz. 389, 361 P.3d 374 (2015).c
Everest Indem. Ins. Co. v. Rea (Rudolfo Bros. Plast., Inc.), 236 Ariz. 503, 342 P.3d 417 (Ct. App. 2015).c
Gastelum v. Hegi, 237 Ariz. 211, 348 P.3d 907 (Ct. App. 2015).C
Glazer v. State of Arizona, 237 Ariz. 160, 347 P.3d 1141 (2015).e
Grubaugh v. Blomo (Lawrence), 238 Ariz. 264, 359 P.3d 1008 (Ct. App. 2015).e
Jaynes v. McConnell, 238 Ariz. 211, 358 P.3d 632 (Ct. App. 2015).e
Lindsay R. v. Cohen (Meyn), 236 Ariz. 565, 343 P.3d 435 (Ct. App. 2015).Ccr
Preston v. Amadei, 238 Ariz. 124, 357 P.3d 720 (Ct. App. 2015).e
Reed-Kaliher v. Hoggate, 237 Ariz. 119, 347 P.3d 136 (2015).cr
State *ex rel.* Polk v. Campbell (Kraps), 238 Ariz. 109, 357 P.3d 144 (Ct. App. 2015), *rev. g.*, CR–15–0303–PR (Feb. 9, 2016).cr
State *ex rel.* Montgomery v. Padilla (Simcox), 238 Ariz. 560, 364 P.3d 479 (Ct. App. 2015).ce
State *ex rel.* Montgomery v. Rogers (Morgan), 237 Ariz. 419, 352 P.3d 451 (Ct. App. 2015).Cr
State *ex rel.* Polk v. Hancock (Ferrell), 237 Ariz. 125, 347 P.3d 142 (2015).cr
State *ex rel.* Montgomery v. Padilla (Simcox), 237 Ariz. 263, 349 P.3d 1100 (Ct. App. 2015).Ce
State v. Abdi, 236 Ariz. 609, 343 P.3d 921 (Ct. App. 2015).c
State v. Adair, 238 Ariz. 193, 358 P.3d 614 (Ct. App. 2015).C
State v. Almeida, 238 Ariz. 77, 356 P.3d 822 (Ct. App. 2015).c
State v. Bennett, 237 Ariz. 356, 351 P.3d 363 (Ct. App. 2015).C
State v. Bernstein (Herman), 237 Ariz. 226, 349 P.3d 200 (2015).e
State v. Burke, 238 Ariz. 322, 360 P.3d 118 (Ct. App. 2015).Cc
State v. Burns, 237 Ariz. 1, 344 P.3d 303 (2015).cre
State v. Carlson, 237 Ariz. 381, 351 P.3d 1079 (2015).Ccre
State v. Cheatham, 237 Ariz. 502, 353 P.3d 382 (Ct. App. 2015), *rev. g.*, CR–15–0286–PR (Mar. 15, 2016).C
State v. Cornman, 237 Ariz. 350, 351 P.3d 357 (Ct. App. 2015).Ce
State v. Coven, 236 Ariz. 393, 340 P.3d 1101 (Ct. App. 2015).r ***he***
State v. Dalton, ___ Ariz. ___, 366 P.3d 133 (Ct. App. 2016).r
State v. Driscoll, 238 Ariz. 432, 361 P.3d 961 (Ct. App. 2015).C
State v. Erivez, 236 Ariz. 472, 341 P.3d 514 (Ct. App. 2015).cr
State v. Evans, 237 Ariz. 231, 349 P.3d 205 (2015).C
State v. Felix, 237 Ariz. 280, 349 P.3d 1117 (Ct. App. 2015).ce *fe*
State v. Fischer, 238 Ariz. 309, 360 P.3d 105 (Ct. App. 2015), *rev. g.*, CR–15–0265–PR (Mar. 15, 2016).Cr
State v. Foncette, 238 Ariz. 42, 356 P.3d 328 (Ct. App. 2015).Cc

State v. Goldin, 239 Ariz. 12, 365 P.3d 364 (Ct. App. 2015).r
State v. Gray, 238 Ariz. 147, 357 P.3d 831 (Ct. App. 2015), *rev. g.*, CR15–0293–PR (Feb. 9, 2016).c
State v. Greenberg, 236 Ariz. 592, 343 P.3d 462 (Ct. App. 2015).Cr
State v. Guarino, 238 Ariz. 437, 362 P.3d 484 (2015).e
State v. Hansen, 237 Ariz. 61, 345 P.3d 116 (Ct. App. 2015).cr
State v. Harm, 236 Ariz. 402, 340 P.3d 1110 (Ct. App. 2015).Ccre
State v. Holle, 238 Ariz. 218, 358 P.3d 639 (Ct. App. 2015), *rev. g.*, CR–15–0348–PR (Mar. 15, 2016).c
State v. Juarez-Orci, 236 Ariz. 520, 342 P.3d 856 (Ct. App. 2015).c ***fe he***
State v. Jurden, 237 Ariz. 423, 352 P.3d 455 (Ct. App. 2015), *rev. g.*, CR–15–0236–PR (Jan. 5, 2016).c
State v. Lee (Ray), 238 Ariz. 19, 355 P.3d 621 (Ct. App. 2015).cr ***ar***
State v. Leteve, 237 Ariz. 516, 354 P.3d 393 (2015).Cce
State v. Liwski (Gillie), 238 Ariz. 184, 358 P.3d 605 (Ct. App. 2015).cr
State v. Lua, 237 Ariz. 301, 350 P.3d 805 (2015).Ccr
State v. Lynch, 238 Ariz. 84, 357 P.3d 119 (2015).cre ***fe***
State v. Maciel, 238 Ariz. 200, 358 P.3d 621 (Ct. App. 2015).Ce
State v. Matlock, 237 Ariz. 331, 350 P.3d 835 (Ct. App. 2015).c
State v. Nissley, 238 Ariz. 446, 362 P.3d 493 (Ct. App. 2015).cr
State v. Okken, 238 Ariz. 566, 364 P.3d 485 (Ct. App. 2015).c
State v. Ontiveros-Loya, 237 Ariz. 472, 352 P.3d 941 (Ct. App. 2015).C
State v. Ortiz, 238 Ariz. 329, 360 P.3d 125 (Ct. App. 2015).ce
State v. Pledger, 236 Ariz. 469, 341 P.3d 511 (Ct. App. 2015).c
State v. Reyes, 238 Ariz. 575, 364 P.3d 1134 (Ct. App. 2015).Cc
State v. Reyes, 238 Ariz. 304, 360 P.3d 100 (Ct. App. 2015).c
State v. Rojo-Valenzuela, 237 Ariz. 448, 352 P.3d 917 (2015).C
State v. Roseberry, 237 Ariz. 507, 353 P.3d 847 (2015).C
State v. Salcido, 238 Ariz. 461, 362 P.3d 508(Ct. App. 2015).cr
State v. Simmons, 238 Ariz. 503, 363 P.3d 120 (Ct. App. 2015).c
State v. Sisco, 238 Ariz. 229, 359 P.3d 1 (Ct. App. 2015), *rev. g.*, CR–15–0265–PR (Mar. 15, 2016).C
State v. Speers, 238 Ariz. 423, 361 P.3d 952 (Ct. App. 2015).r
State v. Steinle (Moran), 237 Ariz. 531, 354 P.3d 408 (Ct. App. 2015), *rev. g.*, CV–15–0263–PR (Feb. 9, 2016).re
State v. Terrazas, 237 Ariz. 170, 347 P.3d 1151 (Ct. App. 2015).e
State v. Valenzuela, 237 Ariz. 307, 350 P.3d 811 (Ct. App. 2015), *rev. g.*, CR–15–0222–PR (Oct. 27, 2015).c
State v. Vassell, 238 Ariz. 281, 359 P.3d 1025 (Ct. App. 2015).c
State v. Veloz, 236 Ariz. 532, 342 P.3d 1272 (Ct. App. 2015).cr
State v. Werderman, 237 Ariz. 342, 350 P.3d 846 (Ct. App. 2015).r
State v. West, 238 Ariz. 482, 362 P.3d 1049 (Ct. App. 2015).Ccre
State v. Williams, 236 Ariz. 600, 343 P.3d 470 (Ct. App. 2015).ce ***fe***
State v. Williamson, 236 Ariz. 550, 343 P.3d 1 (Ct. App. 2015).Ccre
State v. Wilson, 237 Ariz. 296, 350 P.3d 800 (2015).C
State v. Woods, 237 Ariz. 214, 348 P.3d 910 (Ct. App. 2015).C ***fe***
State v. Woods, 236 Ariz. 527, 342 P.3d 863 (Ct. App. 2015).C

2016 CRIMINAL YEAR SEMINAR
2015 Case Citations—Pacific Third

C = Constitutional Law Reporter
c = Criminal Code Reporter
r = Criminal Rules Reporter
e = Arizona Evidence Reporter

ar = appellate review
fe = fundamental error
he = harmless error
se = structural error

State v. Coven, 236 Ariz. 393, 340 P.3d 1101 (Ct. App. 2015).r ***he***
State v. Harm, 236 Ariz. 402, 340 P.3d 1110 (Ct. App. 2015).Ccre

State v. Pledger, 236 Ariz. 469, 341 P.3d 511 (Ct. App. 2015).c
State v. Erivez, 236 Ariz. 472, 341 P.3d 514 (Ct. App. 2015).cr

Everest Indem. Ins. Co. v. Rea (Rudolfo Bros. Plast., Inc.), 236 Ariz. 503, 342 P.3d 417 (Ct. App. 2015).e
State v. Juarez-Orci, 236 Ariz. 520, 342 P.3d 856 (Ct. App. 2015).c ***fe he***
State v. Woods, 236 Ariz. 527, 342 P.3d 863 (Ct. App. 2015).C
State v. Veloz, 236 Ariz. 532, 342 P.3d 1272 (Ct. App. 2015).cr

State v. Williamson, 236 Ariz. 550, 343 P.3d 1 (Ct. App. 2015).Ccre
Lindsay R. v. Cohen (Meyn), 236 Ariz. 565, 343 P.3d 435 (Ct. App. 2015).Ccr
Desert Palm Surg. Grp. v. Petta, 236 Ariz. 568, 343 P.3d 438 (Ct. App. 2015).e
State v. Greenberg, 236 Ariz. 592, 343 P.3d 462 (Ct. App. 2015).Cr
State v. Williams, 236 Ariz. 600, 343 P.3d 470 (Ct. App. 2015).ce ***fe***
State v. Abdi, 236 Ariz. 609, 343 P.3d 921 (Ct. App. 2015).c

State v. Burns, 237 Ariz. 1, 344 P.3d 303 (2015).cre

State v. Hansen, 237 Ariz. 61, 345 P.3d 116 (Ct. App. 2015).cr

Allen v. Sanders, 237 Ariz. 93, 347 P.3d 30 (Ct. App. 2015).Ccr
Reed-Kaliher v. Hoggate, 237 Ariz. 119, 347 P.3d 136 (2015).cr
State *ex rel.* Polk v. Hancock (Ferrell), 237 Ariz. 125, 347 P.3d 142 (2015).cr
Glazer v. State of Arizona, 237 Ariz. 160, 347 P.3d 1141 (2015).e
State v. Terrazas, 237 Ariz. 170, 347 P.3d 1151 (Ct. App. 2015).e

Gastelum v. Hegi, 237 Ariz. 211, 348 P.3d 907 (Ct. App. 2015).C
State v. Woods, 237 Ariz. 214, 348 P.3d 910 (Ct. App. 2015).C ***fe***

State v. Bernstein (Herman), 237 Ariz. 226, 349 P.3d 200 (2015).e
State v. Evans, 237 Ariz. 231, 349 P.3d 205 (2015).C
State *ex rel.* Montgomery v. Padilla (Simcox), 237 Ariz. 263, 349 P.3d 1100 (Ct. App. 2015).Ce
State v. Felix, 237 Ariz. 280, 349 P.3d 1117 (Ct. App. 2015).ce ***fe***

State v. Wilson, 237 Ariz. 296, 350 P.3d 800 (2015).C
State v. Lua, 237 Ariz. 301, 350 P.3d 805 (2015).Ccr
State v. Valenzuela, 237 Ariz. 307, 350 P.3d 811 (Ct. App. 2015), *rev. g,* CR-15-0222-PR (Oct. 27, 2015).c
State v. Matlock, 237 Ariz. 331, 350 P.3d 835 (Ct. App. 2015).c
State v. Werderman, 237 Ariz. 342, 350 P.3d 846 (Ct. App. 2015).r

State v. Cornman, 237 Ariz. 350, 351 P.3d 357 (Ct. App. 2015).Ce
State v. Bennett, 237 Ariz. 356, 351 P.3d 363 (Ct. App. 2015).C
Burch & Cracchiolo v. Myers (Lund), 237 Ariz. 369, 351 P.3d 376 (Ct. App. 2015).e
State v. Carlson, 237 Ariz. 381, 351 P.3d 1079 (2015).Ccre

State *ex rel.* Montgomery v. Rogers (Morgan), 237 Ariz. 419, 352 P.3d 451 (Ct. App. 2015).Cr
State v. Jurden, 237 Ariz. 423, 352 P.3d 455 (Ct. App. 2015), *rev. g.,* CR-15-0236-PR(Jan. 5, 2016).c
State v. Rojo-Valenzuela, 237 Ariz. 448, 352 P.3d 917 (2015).C
City of Scottsdale v. State, 237 Ariz. 467, 352 P.3d 936 (Ct. App. 2015).c
State v. Ontiveros-Loya, 237 Ariz. 472, 352 P.3d 941 (Ct. App. 2015).C

State v. Cheatham, 237 Ariz. 502, 353 P.3d 382 (Ct. App. 2015), *rev. g,* CR-15-0286-PR (Mar. 15, 2016).C
State v. Roseberry, 237 Ariz. 507, 353 P.3d 847 (2015).C

State v. Leteve, 237 Ariz. 516, 354 P.3d 393 (2015).Cce
State v. Steinle (Moran), 237 Ariz. 531, 354 P.3d 408 (Ct. App. 2015), *rev. g,* CV-15-0263-PR (2/9/16).re

State v. Lee (Ray), 238 Ariz. 19, 355 P.3d 621 (Ct. App. 2015).cr ***ar***

State v. Foncette, 238 Ariz. 42, 356 P.3d 328 (Ct. App. 2015).Cc
State v. Almeida, 238 Ariz. 77, 356 P.3d 822 (Ct. App. 2015).c

State v. Lynch, 238 Ariz. 84, 357 P.3d 119 (2015).cre ***fe***
State *ex rel.* Polk v. Campbell (Kraps), 238 Ariz. 109, 357 P.3d 144 (Ct. App. 2015), *rev. granted,* CR-15-0303-PR (Feb. 9, 2016).cr
Preston v. Amadei, 238 Ariz. 124, 357 P.3d 720 (Ct. App. 2015).e
State v. Gray, 238 Ariz. 147, 357 P.3d 831 (Ct. App. 2015), *rev. granted,* CR15-0293-PR (Feb. 9, 2016).c

State v. Liwski (Gillie), 238 Ariz. 184, 358 P.3d 605 (Ct. App. 2015).cr
State v. Adair, 238 Ariz. 193, 358 P.3d 614 (Ct. App. 2015).C
State v. Maciel, 238 Ariz. 200, 358 P.3d 621 (Ct. App. 2015).Ce
Jaynes v. McConnell, 238 Ariz. 211, 358 P.3d 632 (Ct. App. 2015).e
State v. Holle, 238 Ariz. 218, 358 P.3d 639 (Ct. App. 2015), *rev. g.,* CR-15-0348-PR(Mar. 15, 2016).c

State v. Sisco, 238 Ariz. 229, 359 P.3d 1 (Ct. App. 2015), *rev. granted,* CR-15-0265-PR (Mar. 15, 2016).C
Grubaugh v. Blomo (Lawrence), 238 Ariz. 264, 359 P.3d 1008 (Ct. App. 2015).e
State v. Vassell, 238 Ariz. 281, 359 P.3d 1025 (Ct. App. 2015).c

State v. Reyes, 238 Ariz. 304, 360 P.3d 100 (Ct. App. 2015).c
State v. Fischer, 238 Ariz. 309, 360 P.3d 105 (Ct. App. 2015), *rev. g.,* CR-15-0265-PR (Mar. 15, 2016).Cr
State v. Burke, 238 Ariz. 322, 360 P.3d 118 (Ct. App. 2015).Cc
State v. Ortiz, 238 Ariz. 329, 360 P.3d 125 (Ct. App. 2015).ce

Dobson v. McClennen, 238 Ariz. 389, 361 P.3d 374 (2015).c
State v. Speers, 238 Ariz. 423, 361 P.3d 952 (Ct. App. 2015).r
State v. Driscoll, 238 Ariz. 432, 361 P.3d 961 (Ct. App. 2015).C

State v. Guarino, 238 Ariz. 437, 362 P.3d 484 (2015).e
State v. Nissley, 238 Ariz. 446, 362 P.3d 493 (Ct. App. 2015).cr
State v. Salcido, 238 Ariz. 461, 362 P.3d 508(Ct. App. 2015).cr
State v. West, 238 Ariz. 482, 362 P.3d 1049 (Ct. App. 2015).Ccre

State v. Simmons, 238 Ariz. 503, 363 P.3d 120 (Ct. App. 2015).c

Busso-Estopellen v. Mroz, 238 Ariz. 553, 364 P.3d 472 (2015).
State *ex rel.* Montgomery v. Padilla (Simcox), 238 Ariz. 560, 364 P.3d 479 (Ct. App. 2015).ce
State v. Okken, 238 Ariz. 566, 364 P.3d 485 (Ct. App. 2015).c
State v. Reyes, 238 Ariz. 575, 364 P.3d 1134 (Ct. App. 2015).Cc

State v. Goldin, 239 Ariz. 12, 365 P.3d 364 (Ct. App. 2015).r

CITES 2016

State v. Dalton, ___ Ariz. ___, 366 P.3d 133 (Ct. App. 2016).r

Affirmed, Vacated, Reversed, or Overruled

State v. Evans, 235 Ariz. 314, 332 P.3d 61 (Ct. App. 2014),
aff'd, 237 Ariz. 231, 349 P.3d 205, ¶ 18 (2015).

State v. Lua, 235 Ariz. 261, 330 P.3d 1018 (Ct. App. 2014),
vac'd, 237 Ariz. 301, 350 P.3d 805, ¶ 21 (2015).Ccr

State v. Rojo-Valenzuela, 235 Ariz. 617, 334 P.3d 1276 (Ct. App. 2014),
aff'd, 237 Ariz. 448, 352 P.3d 917 (2015).

Darrah v. McClennen, 236 Ariz. 185, 337 P.3d 550 (Ct. App. 2014),
vac'd, 2015WL7759889 (Dec. 1, 2015).

Depublished

State v. Jacot, 235 Ariz. 224, 330 P.3d 981 (Ct. App. 2014).C
depublished., 238 Ariz. 296, 360 P.3d 92 (Sep. 1, 2015).

State v. Wilson, 235 Ariz. 447, 333 P.3d 774 (Ct. App. 2014),
depublished, 237 Ariz. 296, 350 P.3d 800, ¶ 24 (2015).C

Petition for Review Granted

State v. Gear, 236 Ariz. 289, 339 P.3d 1034 (Ct. App. 2014), *rev. g.,* CR-14-0408-PR(Dec. 1, 2015).c
State v. Valenzuela, 237 Ariz. 307, 350 P.3d 811 (Ct. App. 2015), *rev. g.,* CR-15-0222-PR (Oct. 27, 2015).
State v. Jurden, 237 Ariz. 423, 352 P.3d 455 (Ct. App. 2015), *rev. g.,* CR-15-0236-PR(Jan. 5, 2016).
State v. Cheatham, 237 Ariz. 502, 353 P.3d 382 (Ct. App. 2015), *rev. g,* CR-15-0286-PR (Mar. 15, 2016).C
State v. Steinle (Moran), 237 Ariz. 531, 354 P.3d 408 (Ct. App. 2015), *rev. g.,* CV-15-0263-PR(2/9/16).
State *ex rel.* Polk v. Campbell (Kraps), 238 Ariz. 109, 357 P.3d 144 (Ct. App. 2015), *rev. g.,*
CR-15-0303-PR (Feb. 9, 2016).
State v. Gray, 238 Ariz. 147, 357 P.3d 831 (Ct. App. 2015), *rev. g.,* CR15-0293-PR(Feb. 9, 2016).
State v. Holle, 238 Ariz. 218, 358 P.3d 639 (Ct. App. 2015), *rev. g.,* CR-15-0348-PR(Mar. 15, 2016).c
State v. Sisco, 238 Ariz. 229, 359 P.3d 1 (Ct. App. 2015), *rev. g.,* CR-15-0265-PR(Mar. 15, 2016).C
State v. Fischer, 238 Ariz. 309, 360 P.3d 105 (Ct. App. 2015), *rev. g.,* CR-15-0265-PR (Mar. 15, 2016).Cr

ARTICLE 1. GENERAL PROVISIONS.

Rule 103(a) — Preserving a Claim of Error.

103.a.095 A trial court should not preclude an expert's testimony without allowing the party to make an offer of proof.

State v. Carlson, 237 Ariz. 381, 351 P.3d 1079, ¶ 24 (2015) (defendant filed memorandum describing expert's testimony; when trial court disallowed that testimony, defendant asked to supplement offer of proof, but trial court denied request; court stated that supplemental offer would have aided its evaluation of trial court's decision, but was able to resolve issue on record presented).

Rule 103(d) — Preventing the Jury from Hearing Inadmissible Evidence.

103.d.020 Although Arizona law does not explicitly prohibit speaking objections, Rule 103(d) provides that, to the extent practicable, the court must conduct a jury trial so that inadmissible evidence is not suggested to the jurors by any means.

State v. Lynch, 238 Ariz. 84, 357 P.3d 119, ¶¶ 16–17 (2015) (defendant did not identify, and court did find, any inadmissible evidence state incorporated into its speaking objections; further, defendant did not object at trial and failed to demonstrate fundamental error).

103.a.060 Objection of "no foundation" is insufficient to preserve the issue; the objecting party must indicate how the foundation is lacking so that the party offering the evidence can overcome the shortcoming, if possible.

State v. Rodriguez, 186 Ariz. 240, 250, 921 P.2d 643, 653 (1996) (defendant objected to improper foundation for admission of earring; because defendant did not identify what foundation was lacking, trial court did not abuse discretion in admitting exhibit).

State v. Guerrero, 173 Ariz. 169, 171, 840 P.2d 1034, 1036 (Ct. App. 1992) (defendant contended on appeal state failed to provide specifics about times, dates, places, or quantities of prior acts; court held that claim of insufficient foundation may not be raised on appeal unless appellant specifically points out to trial court alleged defects in foundation so that opponent may cure any defects).

Packard v. Reidhead, 22 Ariz. App. 420, 423, 528 P.2d 171, 174 (1974) (court noted that appellee laid tenuous foundation for admission of traffic signal installation report, but held appellant's "no foundation" objection was inadequate to preserve issue for review on appeal; purpose of rule is to enable adversary to obviate objection if possible and to permit trial court to make intelligent ruling).

Rule 106 — Remainder of or Related Writings or Recorded Statements.

106.005 A video is a statement for purposes of Rule 106.

State v. Steinle (Moran), 237 Ariz. 531, 354 P.3d 408, ¶¶ 7–13 (Ct. App. 2015) (witness used cell phone to record fight, cropped first 4½ minutes off recording, and saved remaining 31 seconds of recording; trial court ordered that it would not admit edited or cropped video because full copy was not available), *rev. granted,* CV–15–0263–PR (Feb. 9, 2016).

106.010 When a party introduces a portion of a writing or recorded statement, the other party may require the introduction of any other portion or any other writing or recorded statement that in fairness ought to be considered with the portion admitted, which means a portion of a statement that is necessary to qualify, explain, or place in context the portion of the statement that is already admitted.

State v. Burns, 237 Ariz. 1, 344 P.3d 303, ¶ 71 (2015) (defendant contended trial court should have admitted his statements to police that he had consensual sex with victim; because state did not introduce any writings or recorded statements about defendant and victim having non-consensual sex, defendant's statements were not necessary to qualify, explain, or place in context portion of statement already admitted).

State v. Steinle (Moran), 237 Ariz. 531, 354 P.3d 408, ¶¶ 7–13 (Ct. App. 2015) (witness used cell phone to record fight, cropped first 4½ minutes off recording, and saved remaining 31 seconds of recording; trial court ordered that it would not admit edited or cropped video because full copy was not available), *rev. granted,* CV–15–0263–PR (Feb. 9, 2016).

ARTICLE 3. PRESUMPTIONS IN CIVIL ACTIONS AND PROCEEDINGS

Rule 301 — Presumptions in Civil Cases Generally.

348. Jurors.

348.010 Jurors are presumed to follow the trial court's instructions.

Desert Palm Surg. Grp. v. Petta, 236 Ariz. 568, 343 P.3d 438, ¶¶ 31–33 (Ct. App. 2015) (trial court instructed jurors on qualified privilege for defendant's statements to medical and dental boards, and on absolute privilege for defendant's statements to government officials).

360. Legislation.

360.085 When the legislature chooses different language within a statutory scheme, it is presumed those distinctions are meaningful and evidence an intent to give different meaning and consequence to the alternative language.

State v. Harm, 236 Ariz. 402, 340 P.3d 1110, ¶¶ 15–20 (Ct. App. 2015) (jurors found defendant guilty of threatening or intimidating and not guilty of assisting criminal street gang by committing felony offense, but in the aggravation phase found state proved beyond reasonable doubt defendant committed threatening or intimidating with intent to promote or further assist any criminal conduct by criminal street gang; court held that, because crime of assisting criminal street gang under A.R.S. § 13–2321(B) and enhancement of the sentence under A.R.S. § 13–714 for offense committed with intent to promote, further, or assist criminal street gang have different elements, if defendant has been acquitted of charge of assisting criminal street gang, double jeopardy does not preclude enhancement of sentence for offense committed with intent to promote, further, or assist criminal street gang, thus double jeopardy did not preclude enhancement of sentence).

ARTICLE 4. RELEVANCY AND ITS LIMITS

Rule 401 — Test for Relevant Evidence. (Criminal Cases.)

401.cr.010 For evidence to be relevant, it must satisfy two requirements: **First,** the fact to which the evidence relates must be of consequence to the determination of the action (materiality).

State v. Burns, 237 Ariz. 1, 344 P.3d 303, ¶¶ 46–47 (2015) (victim had GHB (date-rape drug) in liver; because when talking on telephone to sister, victim sounded confused and disoriented (which are side effects of ingested GHB), evidence was relevant; whether GHB could have occurred naturally or from someone giving her dose of drug was relevant to whether sexual intercourse was forced or consensual; that GHB might have been present naturally went to weight and not admissibility).

State v. Burns, 237 Ariz. 1, 344 P.3d 303, ¶¶ 49–51 (2015) (defendant's former fiancée testified on direct about her general feelings (of fear) toward defendant; after defendant attempted on cross-examination to establish former fiancée had recently fabricated that testimony, her testimony on rebuttal that defendant threatened to kill her and that she planned to remove all guns from house was admissible to rebut claim of recent fabrication and was thus relevant).

State v. Burns, 237 Ariz. 1, 344 P.3d 303, ¶¶ 54–55 (2015) (evidence of 16 telephone calls between defendant and fiancée wherein he asked about search for victim's body, whether his brother had cleaned out his (defendant's) vehicle, and whether fiancée would stay with him "no matter what" (by time of trial, fiancée was then former fiancée) relevant to show defendant was involved in victim's disappearance).

401.cr.020 For evidence to be relevant, it must satisfy two requirements: **Second,** the evidence must make the fact that is of consequence more or less probable (relevance).

State v. Burns, 237 Ariz. 1, 344 P.3d 303, ¶¶ 46–47 (2015) (victim had GHB (date-rape drug) in liver; because when talking on telephone to sister, victim sounded confused and disoriented (which are side effects of ingested GHB), evidence was relevant; whether GHB could have occured naturally or from someone giving her dose of drug was relevant to whether sexual intercourse was forced or consensual; that GHB might have been present naturally went to weight and not admissibility).

State v. Burns, 237 Ariz. 1, 344 P.3d 303, ¶¶ 49–51 (2015) (defendant's former fiancée testified on direct about her general feelings (of fear) toward defendant; after defendant attempted on cross-examination to establish former fiancée had recently fabricated that testimony, her testimony on rebuttal that defendant threatened to kill her and that she planned to remove all guns from house was admissible to rebut claim of recent fabrication and was thus relevant).

State v. Burns, 237 Ariz. 1, 344 P.3d 303, ¶¶ 54–55 (2015) (evidence of 16 telephone calls between defendant and fiancée wherein he asked about search for victim's body, whether his brother had cleaned out his (defendant's) vehicle, and whether fiancée would stay with him "no matter what" (by time of trial, fiancée was then former fiancée) relevant to show defendant was involved in victim's disappearance).

401.cr.060 The Sixth Amendment right to present evidence does not give a defendant the right to present a theory of defense in whatever manner and with whatever evidence the defendant's chooses, thus the exclusion of irrelevant evidence does not deny a defendant the Sixth Amendment right to present evidence.

State v. Carlson, 237 Ariz. 381, 351 P.3d 1079, ¶¶ 36–37 (2015) (trial court precluded defendant's expert from testifying about risk factors that would tend to make defendant confess falsely; because defendant never suggested his confession was caused by any mental disorder, personality disorder, or similar affliction, and because defendant's expert did not diagnose or treat defendant and thus had no knowledge whether defendant had such disorders or conditions, trial court did not abuse discretion in precluding that testimony).

401.cr.350 A photograph is admissible if relevant to an expressly or impliedly contested issue.

State v. Burns, 237 Ariz. 1, 344 P.3d 303, ¶¶ 59–62 (2015) (photograph of victim found in desert 3 weeks after murder in advanced state of decomposition with head severed by wild animals relevant and thus admissible because (1) photograph in any murder case is relevant to assist jurors in understanding issue because fact and cause of death are always relevant in murder prosecution, and (2) in this case, photographs showed where body was found and how it was hidden, and helped jurors understand expert testimony).

State v. Felix, 237 Ariz. 280, 349 P.3d 1117, ¶¶ 37–39 (Ct. App. 2015) (photographs of child's crib with bullet damage and stuffed gorilla with bullet hole in it relevant to charge of attempted murder and dangerous crime against children).

Rule 401 — Test for Relevant Evidence. (Impeachment Cases.)

401.imp.010 Evidence that tests, sustains, or impeaches a witness's credibility or character is admissible for impeachment or rehabilitation purposes.

State v. Burns, 237 Ariz. 1, 344 P.3d 303, ¶¶ 101–04 (2015) (defendant's expert testified defendant could be safely managed in Arizona prison system; trial court properly allowed state to question witness about crimes and escapes from private prisons and Arizona State Prison).

Rule 403 — Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons. (Criminal Cases.)

403.cr.005 In order to raise on appeal a claim that the evidence should have been excluded under Rule 403, the party must make a specific objection stating Rule 403 as the grounds for the objection.

State v. Burns, 237 Ariz. 1, 344 P.3d 303, ¶ 45 (2015) (victim and defendant met at gas station and went out on date; almost 3 weeks later, victim was found dead, and state charged defendant with kidnapping, sexual assault, and murder; in opening statement and closing argument, prosecutor stated this was victim's "first date"; defendant contended on appeal evidence that victim had not dated previously warranted a mistrial under Rule 403; because defendant failed to object on that ground at trial, court reviewed for fundamental error only; court held fact that victim's date with defendant was victim's first date helped place victim's actions in context and thus was probative, and held defendant failed to show evidence posed danger of unfair prejudice, thus court found no error, much less fundamental error).

403.cr.010 If evidence is relevant and therefore admissible, a trial court may not exclude that evidence unless the opposing party establishes that the evidence poses the danger of *unfair* prejudice, and establishes that the *unfair* prejudice *substantially* outweighs the probative value.

State v. Burns, 237 Ariz. 1, 344 P.3d 303, ¶ 45 (2015) (victim and defendant met at gas station and went out on date; almost 3 weeks later, victim was found dead, and state charged defendant with kidnapping, sexual assault, and murder; in opening statement and closing argument, prosecutor stated this was victim's "first date"; defendant contended on appeal evidence that victim had not dated previously warranted a mistrial under Rule 403; because defendant failed to object on that ground at trial, court reviewed for fundamental error only; court held fact that victim's date with defendant was victim's first date helped place victim's actions in context and thus was probative, and held defendant failed to show evidence posed danger of unfair prejudice, thus court found no error, much less fundamental error).

State v. Ortiz, 238 Ariz. 329, 360 P.3d 125, ¶¶ 12–21 (Ct. App. 2015) (court concluded testimony of Dr. Wendy Dutton had probative value, and merely because she testified as "cold" witness did not mean her testimony was unfairly prejudicial).

State v. Cornman, 237 Ariz. 350, 351 P.3d 357, ¶¶ 23–25 (Ct. App. 2015) (defendant contended prosecutor's PowerPoint presentation was unfairly prejudicial because it contained pictures of large quantities of methamphetamine, while defendant's case only involved 1.3 grams; because state made clear to jurors that pictures were not from this case and were used for illustration only, trial court did not abuse discretion in allowing PowerPoint).

403.cr.020 If evidence is relevant and therefore admissible, a trial court may exclude that evidence if the opposing party establishes that the evidence poses the danger of *unfair* prejudice, and establishes that the *unfair* prejudice *substantially* outweighs the probative value.

State v. Guarino, 238 Ariz. 437, 362 P.3d 484, ¶ 9 (2015) (evidence that makes defendant look bad may be prejudicial in eyes of jurors, but it is not necessarily unfairly so).

403.cr.100 Once the trial court determines that a photograph has probative value, the trial court, if requested, must determine whether the photograph has any danger of unfair prejudice, and if so, whether the danger of unfair prejudice substantially outweighs the probative value.

State v. Burns, 237 Ariz. 1, 344 P.3d 303, ¶¶ 59–62 (2015) (photograph of victim found in desert 3 weeks after murder in advanced state of decomposition with head severed by wild animals relevant and thus admissible because (1) photograph in any murder case is relevant to assist jurors in understanding issue because fact and cause of death are always relevant in murder prosecution, and (2) in this case, photographs showed where body was found and how it was hidden, and helped jurors understand expert testimony).

State v. Felix, 237 Ariz. 280, 349 P.3d 1117, ¶¶ 37–39 (Ct. App. 2015) (photographs of child's crib with bullet damage and stuffed gorilla with bullet hole in it relevant to charge of attempted murder and dangerous crime against children; trial court reviewed photographs and engaged in proper balancing analysis).

Rule 404(a) — Character Evidence Not Admissible To Prove Conduct; Exceptions: Character of Accused.

404.a.1.cr.040 A defendant may offer "observation evidence" about behavioral tendencies to show he or she possessed a character trait of acting reflexively in response to stress, but may not offer opinion whether defendant was or was not acting reflectively at time of killing.

State v. Leteve, 237 Ariz. 516, 354 P.3d 393, ¶¶ 19–24 (2015) (after defendant's wife had filed for divorce, defendant shot and killed their two sons, age 1 and 5; because defendant's expert would have testified only that defendant had general character trait for impulsivity, and not that he acted impulsively at time of murders, trial court erred by excluding that evidence; trial court further erred in limiting defendant's parent's testimony to those events occurring night before and day of murders; court held error was harmless because evidence showed defendant (1) purchased weapon day wife filed for divorce, (2) sent messages to wife saying that "this will end badly," (3) sent letter that both he and child had signed, (4) shot each child in back of head through pillow or blanket, and (5) had to walk 100 feet after he shot one child in order to shoot other child).

Rule 404(b) — Other crimes, wrongs, or acts. (Criminal cases.)

404.b.cr.090 Extrinsic evidence of another crime, wrong, or act is admissible if it is legally or logically relevant, which means it tends to prove or disprove any issue in the case, and thus is admitted for some purpose other than to show the defendant's criminal character.

State v. Cornman, 237 Ariz. 350, 351 P.3d 357, ¶ 15 (Ct. App. 2015) (defendant contended trial court should have redacted from police station interview detective's statement that they had "buys" by confidential informant; court held this was not admitted to show defendant's propensities to act in certain was and thus was not Rule 404(b) material).

404.b.cr.100 If the **extrinsic** evidence of the other crime, wrong, or act is not relevant to any issue being litigated, then the only effect of that evidence is to show that the person has a bad character, and thus it would be error to admit the evidence.

State v. Burns, 237 Ariz. 1, 344 P.3d 303, ¶¶ 34–39 (2015) (state charged defendant with kidnapping, sexual assault, murder, and misconduct with weapons; because state had to prove defendant's prior felony convictions in order to prove misconduct with weapons, and because jurors would not have heard evidence of defendant's prior felony convictions if kidnapping, sexual assault, and murder charges had been tried separately, evidence of defendant's prior felony convictions was essentially impermissible character evidence, thus trial court abused discretion in not severing charges; court found error harmless, but took opportunity to advise that weapons misconduct charges should not be joined with other charges unless there is a factual nexus).

404.b.cr.230 Extrinsic evidence of another crime, wrong, or act is admissible if it is relevant to show **intent**, but intent is only an issue when the defendant acknowledges doing the act, but denies having the intent the statute requires, thus a blanket denial of criminal conduct does not put intent in issue.

State v. Leteve, 237 Ariz. 516, 354 P.3d 393, ¶¶ 11–17 (2015) (after defendant's wife had filed for divorce, defendant shot and killed their two sons, age 1 and 5; court held following evidence was admissible to show defendant's intent: defendant's (1) telling his wife about his extramarital affairs, (2) calling police in attempt to have wife removed from house, (3) threats to find where wife was living, (4) attempts to create problems where wife was working, (5) sending to wife's boyfriend sexually explicit video defendant and wife had made during marriage, (6) obtaining background checks on wife's boyfriend and boyfriend's ex-wife, and (7) substantial debt and little or no money; court rejected defendant's argument that these acts against wife should not have been admitted because she was not murder victim).

404.b.cr.250 Extrinsic evidence of another crime, wrong, or act is admissible if it is relevant to show **motive**.

State v. Leteve, 237 Ariz. 516, 354 P.3d 393, ¶¶ 11–17 (2015) (after defendant's wife had filed for divorce, defendant shot and killed their two sons, age 1 and 5; court held following evidence was admissible to show defendant's motive: defendant's (1) telling his wife about his extramarital affairs, (2) calling police in attempt to have wife removed from house, (3) threats to find where wife was living, (4) attempts to create problems where wife was working, (5) sending to wife's boyfriend sexually explicit video defendant and wife had made during marriage, (6) obtaining background checks on wife's boyfriend and boyfriend's ex-wife, and (7) substantial debt and little or no money; court rejected defendant's argument that these acts against wife should not have been admitted because she was not murder victim).

404.b.cr.320 Extrinsic evidence of another crime, wrong, or act is admissible if it is relevant **to rebut areas opened** by the other party.

State v. Burns, 237 Ariz. 1, 344 P.3d 303, ¶¶ 49–52 (2015) (defendant's former fiancée testified on direct about her general feelings (of fear) toward defendant; after defendant attempted on cross-examination to establish former fiancée had recently fabricated that testimony, her testimony on rebuttal that defendant threatened to kill her and that she planned to remove all guns from house was admissible to rebut claim of recent fabrication and that she was not credible, and was thus relevant).

Rule 412 — Sex-Offense Cases: The Victim's Sexual Behavior or Predisposition.

§ 13–1421. Evidence relating to victim's chastity; pretrial hearing.

412.040 Evidence of specific instances of the victim's prior sexual conduct is generally not admissible, and is only admissible if the trial court finds the evidence is relevant to a specific fact in issue in the case.

State v. Burns, 237 Ariz. 1, 344 P.3d 303, ¶¶ 43–44 (2015) (victim and defendant met at gas station and went out on date; almost 3 weeks later, victim was found dead and state charged defendant with kidnapping, sexual assault, and murder; in opening statement and closing argument, prosecutor stated this was victim's "first date"; court held relationship between use of term "first date" in this case and sexual conduct was not so close that it fell within ambit of this statute).

412.050 Evidence of specific instances of the victim's prior sexual conduct may be admitted only if the proponent of such evidence proves by clear and convincing evidence that (1) the evidence is relevant and is material to a fact in issue in the case, (2) the evidence is of false allegations of sexual misconduct made by the victim against others, and (3) the inflammatory or prejudicial nature of the evidence does not outweigh the probative value of the evidence.

State ex rel. Montgomery v. Padilla (Simcox), 238 Ariz. 560, 364 P.3d 479, ¶¶ 13–16 (Ct. App. 2015) (defendant sought to admit testimony of doctor who said victim reported that another person (N) had touched her inappropriately; court stated it was not clear whether trial court determined (1) evidence was relevant and was material to fact in issue in case, but stated it was clear that trial court never found (2) evidence was of false allegations of sexual misconduct made by victim against others or (3) inflammatory or prejudicial nature of evidence did not outweigh probative value of the evidence; court thus vacated trial court's ruling that evidence was admissible).

ARTICLE 5. PRIVILEGES

Rule 501 — Privilege in General.

08. Arizona Medical Board.

501.08.030 A.R.S. § 32–1451(A) abrogated the common law, which provided an absolute privilege for reports involving professional misconduct in quasi-judicial proceedings, and replaced it with a qualified privilege for one who provides information in good faith.

Desert Palm Surg. Grp. v. Petta, 236 Ariz. 568, 343 P.3d 438, ¶¶ 31–33 (Ct. App. 2015) (trial court instructed jurors on qualified privilege for defendant's statements to medical and dental boards; plaintiff presented evidence from which jurors could find defendant acted out of spite or to ruin plaintiffs' reputation or injure their business).

26. Waiver by Statute.

501.26.020 Because the legislature has created certain privileges by statute, the legislature by statute may limit those privileges and limit the extent of a waiver of those privileges.

Grubaugh v. Blomo (Lawrence), 238 Ariz. 264, 359 P.3d 1008, ¶¶ 5–16 (Ct. App. 2015) (plaintiff brought legal malpractice claim against her former attorneys as result of dissolution agreement reached during mediation; court held mediation statute, A.R.S. § 12–2238(B), listed four specific instances when mediation privilege did not apply, thus trial court erred in ruling that implied waiver existed).

27. Waiver by Conduct.

501.27.050 In a case when a litigant claiming the attorney-client privilege relies on a subjective and allegedly reasonable evaluation of the law and advances that evaluation as a claim or defense, and this evaluation necessarily incorporates what the litigant learned from its attorneys, the communications are discoverable and admissible, but when a litigant claiming the attorney-client privilege defends exclusively on the basis that its actions were objectively reasonable and merely asked its attorneys to evaluate the reasonableness of its conduct under the statutes and case law, the party has not waived the attorney-client privilege because it has not put at issue any advice it received from its attorneys.

Everest Indem. Ins. Co. v. Rea (Rudolfo Bros. Plastering, Inc.), 236 Ariz. 503, 342 P.3d 417, ¶¶ 5–12 (Ct. App. 2015) (Rudolfo contended Everest committed bad faith by entering into settlement agreement with others that exhausted liability coverage; Everest contended it made decision to settle in good faith based on subjective beliefs concerning relative merits of available courses of action; although Everest communicated with counsel in process of making that decision, there was no showing that defense was dependent on advice or consultation with counsel, so no showing Everest waived attorney-client privilege).

Rule 502 — Attorney-Client Privilege and Work Product; Limitations on Waiver.

502.b.010 A disclosure does not operate as a waiver in an Arizona proceeding if: (1) the disclosure is inadvertent; (2) the holder of the privilege or protection took reasonable steps to prevent disclosure; and (3) the holder promptly took reasonable steps to rectify the error, including following Arizona Rule of Civil Procedure 26.1(f)(2) Ethical Rule 4.4(b).

Burch & Cracchiolo (Lund, Olson, and Page) v. Myers (Bradford Lund), 237 Ariz. 369, 351 P.3d 376, ¶¶ 14–35 (Ct. App. 2015) (in 2006, Bradford Lund filed petition to create guardianship for himself; 2 months later, Jennings, Strouss & Salmon appeared on behalf of Bradford and withdrew petition; in 2009, Bradford's relatives (Lund/Olson/Page, collectively LOP) asked court to appoint guardian and conservator for Bradford, which Bradford and his father and step-mother (collectively Lunds) opposed; in September 2011, LOP's attorney (Murphy of Burch & Cracchiolo) served subpoena on JS&S asking for all "nonprivileged" documents; attorney at JS&S mistakenly thought Murphy represented Bradford and therefore provided Murphy (and B&C) with entire client file (239 pages) without reviewing it for privileged information; on 10/03, Bradford's attorney (Shumway) learned JS&S had given entire client file to Murphy; on 10/04, Shumway sent Murphy e-mail saying he believed file contained at least two privileged documents that should be returned, and that he would inform Murphy if further review revealed other privileged documents; Murphy said he would await further word from Shumway; after not hearing from Shumway for 3 weeks, Murphy distributed copies of the entire file to all other counsel; on 11/14, Lunds filed motion to disqualify Murphy and B&C on grounds Murphy had read, kept, and distributed privileged material; in preparation for defense against motion to disqualify, Murphy reviewed in detail entire client file, making notes and preparing index; after Arizona Supreme Court issued it 2013 opinion, trial court appointed special master to review arguments and documents; after reviewing special master's report and reviewing certain documents *in camera,* trial court determined B&C had violated Rule 26.1(f)(2) and granted Lunds' motion to disqualify Murphy and B&C; on appeal, court held Lunds' motion to disqualify Murphy and B&C did not waive attorney-client privilege, and further held trial court did not abuse discretion in granting motion to disqualify Murphy and B&C).

ARTICLE 6. WITNESSES

Rule 606(b) — Juror's Competency As Witness — Inquiry into validity of verdict in civil action.

606.b.010 Trial court may consider an affidavit that alleges (A) extraneous prejudicial information was improperly brought to jurors' attention; (B) an outside influence was improperly brought to bear on any juror; or (C) a mistake was made in entering the verdict on the verdict form.

American Power Prod. v. CSK Auto, ___ Ariz. ___, ___ P.3d ___, 2016WL453485, ¶¶ 2–5 (Feb. 5, 2016) (on breach of contract and negligent misrepresentation claim, trial lasted 12 trial days and included 24 witnesses and 164 exhibits; on Friday afternoon before 3-day weekend, jurors received case at about 2:15 and returned verdict at 4:13; juror's affidavit stated that, at one point bailiff came into the room, someone asked her how long deliberations typically lasted, and she told them an hour or two should be plenty).

606.b.020 The trial court may not consider an affidavit or question the jurors about the validity of a verdict in a civil case, and a juror may not testify about any statement made or incident that occurred during the jury's deliberations, the effect of anything on that juror's or another juror's vote, or any juror's mental processes concerning the verdict or indictment.

American Power Prod. v. CSK Auto, Inc., 235 Ariz. 509, 334 P.3d 199, ¶¶ 4–8 (Ct. App. 2014) (on breach of contract and negligent misrepresentation claim, trial lasted 12 trial days and included 24 witnesses and 164 exhibits; on Friday afternoon before 3-day weekend, jurors received case at about 2:15 and returned verdict at 4:13; affidavits from jurors said deliberations were not fair, most jurors refused to consider evidence and just wanted to go home, and that other jurors felt pressured to go along; because that part of affidavits described statements made or incidents that occurred during jurors' deliberations, effect that had another juror's vote, and juror's mental processes, trial court was not permitted to consider those parts of affidavits), *vac'd,* ___ Ariz. ___, ___ P.3d ___, 2016WL453485 (Feb. 5, 2016).

606.b.030 If a party requests a new trial based on juror misconduct, if there is a significant question about what occurred or whether the affiant is credible and whether the alleged facts, if true, would establish a basis for granting the motion, the court must hold an evidentiary hearing before ruling on a motion for new trial, but if there is no significant factual question, the trial court may grant or deny a motion for a new trial without holding an evidentiary hearing.

American Power Prod. v. CSK Auto, ___ Ariz. ___, ___ P.3d ___, 2016WL453485, ¶¶ 12–13 (Feb. 5, 2016) (juror's affidavit stated that, at one point bailiff came into the room, someone asked her how long deliberations typically lasted, and she told them an hour or two should be plenty; because there was no dispute about what had occurred, trial court was not required to hold evidentiary hearing).

606.b.050 When an improper communication creates a structural defect in the trial that deprives a litigant of an essential right, the trial judge must conclusively presume prejudice; in all other cases, because the court may not inquire into the effect of the communication on individual jurors, the court must determine whether the communication would likely prejudice a hypothetical average juror, and the moving party must demonstrate the objective likelihood of prejudice.

American Power Prod. v. CSK Auto, ___ Ariz. ___, ___ P.3d ___, 2016WL453485, ¶¶ 12–19 (Feb. 5, 2016) (juror's affidavit stated that, at one point bailiff came into the room, someone asked her how long deliberations typically lasted, and she told them an hour or two should be plenty; because bailiff's statement did not relate to any specific or disputed fact or strength of evidence presented by either side, nor did it involve any legal issue in case, trial court reasonably determined that bailiff's statement had no bearing on issues, thus trial court did not abuse its discretion in denying motion for new trial).

Rule 611 — Mode and Order of Examining Witnesses and Presenting Evidence.

611.010 An argumentative question is a question that seeks no factual testimony, but requires instead that the witness acquiesce in inferences drawn by counsel from prior testimony.

State v. Lynch, 238 Ariz. 84, 357 P.3d 119, ¶ 24 (2015) (although cross-examination was argumentative, and trial judge could have sustained objection on that basis, defense had elicited from expert witness testimony that defendant could be safely housed in prison, thus questions about other offenders who had escaped from prison was relevant to whether defendant could be housed safely, so cross-examination was relevant rebuttal to that testimony).

Rule 611(b) — Mode and Order of Examining Witnesses and Presenting Evidence — Scope of cross-examination.

611.b.045 A defendant who has been allowed self-representation has the right to cross-examine the witnesses personally, and this right may be abrogated only if the state makes a showing that such cross-examination will injure the physical or psychological well-being of the witness.

State ex rel. Montgomery v. Padilla (Simcox), 237 Ariz. 263, 349 P.3d 1100, ¶¶ 9–24 (Ct. App. 2015) (defendant was charged with sexual offenses with minors; victims were defendant's 8-year-old daughter and daughter's 8-year-old friend; state also intended to call daughter's 7-year-old friend to testify about alleged incident she had with defendant; because state did not make showing that defendant's cross-examination of victim-witnesses would injure their physical or psychological well-being; trial court correctly allowed defendant right to cross-examine victim-witnesses).

611.b.090 The trial court has the discretion to permit re-cross-examination on any new issue raised on re-direct.

State v. Burns, 237 Ariz. 1, 344 P.3d 303, ¶ 53 (2015) (defendant contended he should have been allowed to re-cross-examine his former fiancée about telephone conversation wherein she told defendant's co-worker she was not afraid of defendant and defendant was never violent with women; because defendant's attorney asked about this conversation on cross-examination and no new issue arose during re-direct examination that would warrant re-cross-examination, trial court did not abuse discretion in not permitting re-cross-examination).

ARTICLE 7. OPINION AND EXPERT TESTIMONY

Rule 702 — Testimony by Expert Witnesses.

702.001 Trial courts should serve as gatekeepers in assuring that proposed expert testimony is relevant and reliable and thus helpful to the jury's determination of facts at issue, but should not supplant traditional jury determinations of credibility and the weight to be afforded otherwise admissible testimony.

State v. Carlson, 237 Ariz. 381, 351 P.3d 1079, ¶¶ 22–29 (2015) (trial court precluded expert from testifying that defendant told him he falsely confessed and defendant's explanation why he did so; because (1) defendant's statements were inadmissible hearsay, (2) defendant never established that experts would have relied on such statements in forming opinion, and (3) allowing that testimony would have cloaked statements with implication that expert relied on them while shielding defendant from rigors of cross-examination, trial court did not abuse discretion in precluding that testimony).

702.005 Because the current version of Rule 702 is not a new constitutional rule, it does not apply to trials that ended before the new rule became effective on January 1, 2012, thus *Daubert* and new Rule 702 does not apply to trial that ended before that date.

State v. Burns, 237 Ariz. 1, 344 P.3d 303, ¶¶ 63–65 (2015) (defendant contended trial court should have held *Daubert* hearing; because trial concluded December 16, 2010, *Daubert* and new Rule 702 did not apply to defendant's trial; defendant contended trial court should have precluded testimony of state's ballistics expert under *Frye*; because testimony did not rely on any novel theory or process, it was not subject to *Frye*).

702.020 A witness may be qualified as an expert by knowledge, skill, or experience.

Preston v. Amadei, 238 Ariz. 124, 357 P.3d 720, ¶¶ 30–37 (Ct. App. 2015) (plaintiff's expert witness had been board-certified in internal medicine since 1977 and board-certified in cardiology since 1991; trial court did not abuse discretion in finding expert witness's extensive practice was sufficient to qualify him as expert witness).

702.030 To qualify as an expert, a witness need not have the highest possible qualifications or highest degree of skill or knowledge, and the trial court should construe liberally whether the witness is qualified as an expert; all the witness need have is a skill or knowledge superior to that of persons in general, and the level of skill or knowledge affects the weight of the testimony and not its admissibility.

State v. Carlson, 237 Ariz. 381, 351 P.3d 1079, ¶¶ 30–31 (2015) (because expert's expertise was in general area of false confession and had no expertise or experience in area of false confessions to media, trial court precluded expert from testifying about risk factors that would tend to make defendant confess falsely when he spoke to media; court held this lack of specific expertise went to weight of the testimony and not its admissibility; trial court nonetheless did not abuse discretion in precluding that testimony because testimony went to defendant's general propensity to lie rather than to mental and physical circumstances affecting voluntariness of confession).

702.045 A trial court should not preclude an expert's testimony without allowing the party to make an offer of proof.

State v. Carlson, 237 Ariz. 381, 351 P.3d 1079, ¶ 24 (2015) (defendant filed memorandum describing expert's testimony; when trial court disallowed that testimony, defendant asked to supplement offer of proof, but trial court denied request; court stated that supplemental offer would have aided its evaluation of trial court's decision, but was able to resolve issue on record presented).

Rule 702(a) — Testimony by Expert Witnesses — Assist trier of fact.

702.a.020 When a matter is of such common knowledge that a lay person could reach as intelligent a conclusion as an expert, the trial court should preclude expert opinion.

State v. Ortiz, 238 Ariz. 329, 360 P.3d 125, ¶ 11 (Ct. App. 2015) (court rejected defendant's contention that, in today's society, much of Dr. Wendy Dutton's testimony was common knowledge).

702.a.030 Merely because the expert is testifying as a "cold" witness does not mean that witness's testimony will not assist the jurors in determining a fact in issue.

State v. Ortiz, 238 Ariz. 329, 360 P.3d 125, ¶¶ 2–8 (Ct. App. 2015) (defendant was 53 and victim was 15; defendant was victim's wrestling coach and was convicted of four sexual acts with her; Dr. Wendy Dutton testified as "cold" witness).

702.a.040 An expert may testify about behavioral characteristics of certain classes of persons, but may not give an opinion about the accuracy, reliability, or truthfulness of a particular person, or quantify the percentage of such persons who are truthful.

State v. Carlson, 237 Ariz. 381, 351 P.3d 1079, ¶ 29 (2015) (trial court precluded expert from testifying that defendant told him he falsely confessed and defendant's explanation why he did so; because (1) defendant's statements were inadmissible hearsay, (2) defendant never established that experts would have relied on such statements in forming opinion, (3) allowing that testimony would have cloaked statements with implication that expert relied on them while shielding defendant from rigors of cross-examination, and (4) expert in effect would have been giving opinion about defendant's truthfulness, trial court did not abuse discretion in precluding that testimony).

702.a.045 Arizona has not addressed directly admissibility of testimony about a defendant's propensity to lie, but federal courts have not allowed such testimony unless it related to some mental or personality disorder that would cause the defendant to lie.

State v. Carlson, 237 Ariz. 381, 351 P.3d 1079, ¶¶ 32–35 (2015) (trial court precluded defendant's expert from testifying about risk factors that would tend to make defendant confess falsely; because defendant never suggested his confession was caused by any mental disorder, personality disorder, or similar affliction, and because defendant's expert did not diagnose or treat defendant and thus had no knowledge whether defendant had such disorders or conditions, trial court did not abuse discretion in precluding that testimony).

Rule 702(c) — Testimony by Expert Witnesses — Reliable principles and methods.

702.c.040 Expert testimony based on a novel scientific principle, formula, technique, or procedure developed or advanced by others is admissible if (1) the witness is qualified as an expert, (2) the testimony will aid the jurors to understand the evidence or to determine a fact in issue, and (3) the scientific principle, formula, technique, or procedure has gained general acceptance in the particular scientific field in which it belongs.

State v. Burns, 237 Ariz. 1, 344 P.3d 303, ¶¶ 63–65 (2015) (defendant contended trial court should have precluded testimony of state's ballistics expert under *Frye*; because testimony did not rely on any novel theory or process, it was not subject to *Frye*).

Rule 702(e) — Testimony by Expert Witnesses — Particular areas.

702.e.010 When an expert testifies about what is the "standard of care," that expert's personal practices in that area may be relevant.

Jaynes v. McConnell, 238 Ariz. 211, 358 P.3d 632, ¶¶ 2–4, 13–19(Ct. App. 2015) (in April 2007, Dr. G. performed routine gynecological examination on plaintiff, discovered lesion on her rectovaginal wall, explained lesion was possibly cyst, and that removal was optional; plaintiff was hesitant to have surgery because of risks involved; on May 24, 2007, plaintiff saw Dr. McConnell (Dr. Mc.), who performed transrectal ultrasound (TRUS) and gave written report to Dr. G. and spoke over telephone recommending repeat measurement if mass/cyst was not removed in 3 months; on September 13, 2007, plaintiff returned to Dr. Mc., who performed second TRUS and determined mass/cyst was "relatively unchanged," when in fact mass/cyst had changed; Dr. Mc. faxed to Dr. G. her interpretation of second TRUS, but did not call Dr. G. to discuss results of this second TRUS; in late 2010, plaintiff sought medical help after experiencing additional symptoms; in January 2011, cyst was diagnosed as Stage IV rectal cancer, which is incurable and would cause plaintiff's death; Dr. C. appeared as expert witness for Dr. Mc. and testified that standard of care did not require examining doctor to call referring doctor and discuss results; court held trial court erred in precluding Dr. C. from testifying that it was his practice to make such a call and that error was not harmless).

Rule 702(f) — Testimony by Expert Witnesses — Statutes and Rules.

702.f.065 If the party against whom the testimony is offered is or claims to be a specialist or board-certified specialist, then A.R.S. § 12–2604 requires that the expert witness must be a specialist or board-certified specialist and must have devoted a majority of time in the year immediately preceding to occurrence to the active clinical practice in the same health profession as the defendant.

Preston v. Amadei, 238 Ariz. 124, 357 P.3d 720, ¶¶ 10–14 (Ct. App. 2015) (defendant was board-certified in internal medicine, and plaintiff's expert witness was board-certified both in internal medicine and cardiology; because plaintiff's expert witness devoted majority of time in previous year to cardiology, he could not have devoted majority of time in previous year to internal medicine, thus he did not qualify as expert under A.R.S. § 12–2604).

Rule 703 — Bases of an Expert's Opinion Testimony.

703.080 An expert witness may disclose the facts or data if the party offering the evidence establishes that experts in a particular field would reasonably rely on certain kinds of facts or data in forming an opinion on the subject.

State v. Carlson, 237 Ariz. 381, 351 P.3d 1079, ¶ 28 (2015) (trial court precluded expert from testifying that defendant told him he falsely confessed and defendant's explanation why he did so; because defendant never established experts in field of false confessions would reasonably rely on defendant's own statement that confession was false, trial court did not abuse discretion in precluding that testimony).

703.095 If an expert witness discloses the facts or data only for the limited purpose of disclosing the basis of the opinion, they are not substantive evidence and admission of those facts and data does not violate the right of confrontation, and because they are not admitted to prove the truth of the matter asserted, they are not hearsay.

State v. Guarino, 238 Ariz. 437, 362 P.3d 484, ¶¶ 33–35 (2015) (state's gang experts were permitted to base opinions on information from debriefings, free talks, wire taps, and letter interceptions from gang members, and learned in undercover capacity from gang members).

703.115 This rule does not authorize admitting hearsay on the pretense that it is the basis for the expert's opinion when the expert adds nothing to the out-of-court statement other than transmitting it to the jurors.

State v. Carlson, 237 Ariz. 381, 351 P.3d 1079, ¶¶ 22–29 (2015) (trial court precluded expert from testifying that defendant told him he falsely confessed and defendant's explanation why he did so; because (1) expert would not have provided any additional insight or information about those statements and (2) defendant could not have testified about those statements without submitting to cross-examination, trial court did not abuse discretion in precluding that testimony).

Rule 704 — Opinion on an Ultimate Issue.

704.010 Opinion evidence is admissible even if it involves an ultimate issue in the case.

State v. Williamson, 236 Ariz. 550, 343 P.3d 1, ¶¶ 27–31 (Ct. App. 2015) (officer's testimony that, in sting operation, they are trained to tell person that person has opportunity to walk away because "we try to get away from the entrapment issue" was not opinion on ultimate issue of defendant's guilt).

704.030 An expert may testify about behavioral characteristics of certain classes of persons, but may not give an opinion about the accuracy, reliability, or truthfulness of a particular person, or quantify the percentage of such persons who are truthful.

State v. Lynch, 238 Ariz. 84, 357 P.3d 119, ¶¶ 13–15 (2015) (prosecutor's questions related to expert's witness interviews and not to testimony of those witnesses, thus questions did not deny defendant fair trial).

ARTICLE 8. HEARSAY

Rule 801 — Definitions That Apply to This Article; Exclusions from Hearsay.

801.010 Admission of an out-of-court statement that is non-hearsay is not "testimonial evidence" and does not violate the confrontation clause of the United States Constitution.

State v. Cornman, 237 Ariz. 350, 351 P.3d 357, ¶ 15 (Ct. App. 2015) (defendant contended trial court should have redacted from police station interview detective's statement that they had "buys" by confidential informant; court held this was admitted for context and not for truth of matter asserted, thus no Confrontation Clause violation).

801.100 The Confrontation Clause does not require that every person in the chain of custody be available to cross-examination, thus not everyone whose testimony might be relevant in establishing the chain of custody, authenticity of the sample, or accuracy of the testing device must appear in person.

State v. Ortiz, 238 Ariz. 329, 360 P.3d 125, ¶¶ 22–59 (Ct. App. 2015) (both parties agreed that defendant's claim was "exactly the same" as that in *State v. Gomez,* 226 Ariz. 165, 244 P.3d 1163 (2010); court rejected defendant's contention that *Gomez* was no longer good law in light of recent United States Supreme Court opinions).

Rule 801(c) — Definitions That Apply to This Article — Hearsay.

801.c.020 If the evidence is an out-of-court assertion, it is not hearsay if it is offered for a purpose other than to prove the truth of the matter asserted, but that other purpose still must be relevant.

State v. Cornman, 237 Ariz. 350, 351 P.3d 357, ¶ 15 (Ct. App. 2015) (defendant contended trial court should have redacted from police station interview detective's statement that they had "buys" by confidential informant; court held this was admitted for context and not for truth of matter asserted, thus no Confrontation Clause violation).

801.c.030 If the out-of-court assertion is admitted for a purpose other than to prove the truth of the matter asserted, then its admission does not violate the right of confrontation.

State v. Cornman, 237 Ariz. 350, 351 P.3d 357, ¶ 15 (Ct. App. 2015) (defendant contended trial court should have redacted from police station interview detective's statement that they had "buys" by confidential informant; court held this was admitted for context and not for truth of matter asserted, thus no Confrontation Clause violation).

Rule 801(d)(1)(A) — Statements That Are Not Hearsay: A declarant-witness's prior statement.

801.d.1.A.010 A prior statement is admissible if it is inconsistent with trial testimony, based on the rationale that the jurors should be allowed to hear the conflicting statements and determine which story represents the truth in light of all the facts, such as the demeanor of the witness, the matters brought out in direct and cross-examination, and the testimony of others.

State v. West, 238 Ariz. 482, 362 P.3d 1049, ¶¶ 72–74 (Ct. App. 2015) (prosecutor questioned defendant's expert witness about book chapter he had co-authored; court rejected defendant's contention that prosecutor had to establish book was reliable under Rule 803(18), and held information was admissible as prior inconsistent statement under Rule 801(d)(1)(A)).

801.d.1.A.090 In determining under Rule 403 whether to admit a prior inconsistent statement, the trial court should consider, *inter alia* the following *Allred* factors: (1) whether the witness being impeached admits or denies making impeaching statement and whether the witness being impeached is subject to any factors affecting reliability, such as age or mental capacity; (2) whether the witness presenting the impeaching statement has an interest in the proceedings and whether there is any other evidence showing the witness made the impeaching statement; (3) whether the witness presenting impeaching statement is subject to any other factors affecting reliability, such as age or mental capacity; (4) whether the true purpose of the statement is to impeach witness or to serve as substantive evidence; and (5) whether there is any evidence of guilt other than the statement.

State v. Williams, 236 Ariz. 600, 343 P.3d 470, ¶¶ 14–19 (Ct. App. 2015) (because state presented no other evidence to prove defendant's use of marijuana other than evidence admitted for impeachment purposes only that defendant had THC in blood, trial court vacated defendant's conviction for use of marijuana).

Rule 801(d)(2)(A) — Statements That Are Not Hearsay: An opposing party's statement.

801.d.2.A.060 The *corpus delicti* doctrine ensures a defendant's conviction is not based upon an uncorroborated confession or incriminating statement, thus the state must show (1) a certain result has been produced, and (2) the result was caused by criminal action rather than by accident or some other non-criminal action; only a reasonable inference of the *corpus delicti* need exist before the jurors may consider an incriminating statement, and circumstantial evidence may support such an inference; furthermore, the state need not present evidence supporting the inference of *corpus delicti* before it submits the defendant's statement as long as the state ultimately submits adequate proof of the corpus delicti before it rests.

State v. Carlson, 237 Ariz. 381, 351 P.3d 1079, ¶¶ 8–14 (2015) (defendant gave television interview wherein he admitted kidnapping (and killing) two victims; blood and DNA evidence linked to victim #1 was found in back seat and trunk of defendant's car; her purse was found in her trailer, and testimony indicated she would have taken purse if she left voluntarily; court held this supported inference that defendant kidnapped victim #1; DNA evidence linked to victim #2 was found in passenger compartment of defendant's car, and victim #1 and victim #2 lived together and disappeared at same time, and remains of both victims were disposed of in same manner and found in same place; court held this supported inference that defendant kidnapped victim #2).

State v. Maciel, 238 Ariz. 200, 358 P.3d 621, ¶¶ 27–30 (Ct. App. 2015) (person observed defendant seated next to vacant building with broken window; when officer arrived, defendant denied any knowledge of removal of board from window; defendant later said he had removed board day before and entered building to look for money; court noted following: (1) person from building next door told officers board had been in place over window 3 days earlier; (2) force would have had to have been used to remove board; (3) shoe prints were inside building, and although they did not match shoes defendant was wearing, defendant could have been wearing different shoes day before; (4) building was used primarily for storage and window led to storage area; and (5) maintenance man who walked property twice weekly had not reported seeing anything "out of place" before incident; court held this was sufficient circumstantial evidence to show burglary had been committed and corroborated defendant's statements).

801.d.2.A.061 Whether the state has produced sufficient evidence to establish *corpus delicti* apart from the defendant's statement is a legal analysis for the trial court, thus if the state fails to produce sufficient evidence to establish *corpus delicti* apart from the defendant's statement, the trial court should grant a motion for judgment of acquittal, but if the trial court determines the state has produced sufficient evidence to establish *corpus delicti,* the jurors may consider all the evidence and there is no need to instruct the jurors on corroboration.

State v. Cornman, 237 Ariz. 350, 351 P.3d 357, ¶¶ 16–20 (Ct. App. 2015) (because trial court determined state had established *corpus delicti,* trial court did not abuse discretion in denying defendant's requested jury instruction on corroboration).

801.d.2.A.064 The Arizona Supreme Court has never adopted the "trustworthiness" doctrine for *corpus delicti.*

State v. Carlson, 237 Ariz. 381, 351 P.3d 1079, ¶¶ 10, 15 (2015) (court held evidence was sufficient under either *corpus delicti* or trustworthiness corroboration rule).

Rule 803(18) — Exceptions to the Rule Against Hearsay—Regardless of Whether the Declarant Is Available as a Witness—Statements in Learned Treatises, Periodicals, or Pamphlets.

803.18.010 A statement is not excluded by the rule against hearsay if it is contained in a treatise, periodical, or pamphlet and (A) the statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and (B) the publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice; if admitted, the statement may be read into evidence but not received as an exhibit.

State v. West, 238 Ariz. 482, 362 P.3d 1049, ¶¶ 68–69 (Ct. App. 2015) (prosecutor asked expert witness if the four journals were reputable, and witness agreed and confirmed they were all peer-reviewed; court held prosecutor complied with this rule).

803.18.020 This rule requires that the treatise, periodical, or pamphlet be established as a reliable authority; there is no requirement that the individual articles be established as a reliable authority.

State v. West, 238 Ariz. 482, 362 P.3d 1049, ¶ 70 (Ct. App. 2015) (court rejected defendant's contention that individual articles within journals be verified as reliable).

Rule 804 — Residual Exception.

807.050 Self-serving statements, such as claims of innocence, lack circumstantial guarantees of trustworthiness.

State v. Burns, 237 Ariz. 1, 344 P.3d 303, ¶¶ 66–70 (2015) (defendant's statements to police that he had consensual sex with victim did not have circumstantial guarantees of trustworthiness: (1) statements were not spontaneous, but were made in response to police questioning 2 days after victim disappeared; and (2) defendant was not motivated to speak truthfully, being in police station interview room and speaking about a murder investigation).

State v. Tinajero, 188 Ariz. 350, 935 P.2d 928 (Ct. App. 1997) (after defendant was arrested for leaving the scene of an accident, he said he was not the one who had been driving the car; court held this statement lacked trustworthiness and thus was not admissible).

ARTICLE 11. MISCELLANEOUS RULES

Rule 1101(b) — Applicability of the Rules — Proceedings generally.

1101.b.030 The Rules of Evidence do not apply during the penalty phase of a capital trial, but the state may only introduce evidence that is relevant to any of the mitigating circumstances or that tends to show that the defendant should not be shown leniency, and whether evidence falls within these categories is guided by fundamentally the same considerations as a relevancy determination under Rule 401 and Rule 403 of the Arizona Rule of Evidence.

State v. Guarino, 238 Ariz. 437, 362 P.3d 484, ¶¶ 6–8 (2015) (defendant's participation in murder was important consideration in penalty phase, so codefendant's statements implicating defendant as major participant were relevant and rebutted defendant's mitigation claim that others influenced him to commit murder).

U.S. Const. amend. 4 Search and seizure—Legitimate expectation of privacy.

us.a4.ss.xp.010 An individual does not have automatic standing to challenge a search; an individual must have a legitimate expectation of privacy in the searched area before that interest will be protected by the Fourth Amendment, and there are two factors that determine whether the person has a legitimate expectation of privacy, the **first** of which is whether the individual, by conduct, has exhibited an actual (subjective) expectation of privacy.

State v. Foncette, 238 Ariz. 42, 356 P.3d 328, ¶¶ 12–16 (Ct. App. 2015) (defendant had no reasonable expectation of privacy in hotel hallway outside of his room, thus officer's use of narcotics dog in hallway did not violate defendant's Fourth Amendment rights).

us.a4.ss.xp.020 An individual does not have automatic standing to challenge a search; an individual must have a legitimate expectation of privacy in the searched area before that interest will be protected by the Fourth Amendment, and there are two factors that determine whether the person has a legitimate expectation of privacy, the **second** of which is whether the individual's subjective expectation of privacy is one that society is prepared to recognize as reasonable.

State v. Foncette, 238 Ariz. 42, 356 P.3d 328, ¶ 17 (Ct. App. 2015) (defendant contended officer's use of narcotics dog in hallway invaded his reasonable expectation of privacy because it detected information about items inside of room; court stated, "But any interest in possessing contraband cannot be deemed 'legitimate' and thus state actions that reveal only contraband do not compromise any privacy interest that society accepts as reasonable,"thus no violation of defendant's Fourth Amendment rights).

U.S. Const. amend. 4 Search and seizure—Actions not subject to the exclusionary rule.

us.a4.ss.as.050 The purpose of the exclusionary rule is to deter unlawful police conduct and not to punish nonculpable, innocent police conduct.

State v. Driscoll, 238 Ariz. 432, 361 P.3d 961, ¶¶ 11–17 (Ct. App. 2015) (after issuing repair order for defective license plate light, officer suspected defendant was involved in other criminal activity, so officer had narcotics dog conduct sniff, which led to evidence of other crimes; court held continued detention was not permissible, but did not apply exclusionary rule because officer acted properly under law in effect at time of stop).

U.S. Const. amend. 4 Search and seizure—Investigative stop and reasonable suspicion.

us.a4.ss.is.030 An officer may stop and detain a person for investigatory purposes if the totality of the circumstances gives the officer a reasonable, articulable suspicion that a particular person has committed, was committing, or was about to commit a crime or a traffic violation.

State v. Woods, 236 Ariz. 527, 342 P.3d 863, ¶¶ 10–17 (Ct. App. 2015) (following facts gave reasonable suspicion to detain defendant for arrival of narcotic dog: defendant was driving rental car with no personal belongings; defendant's explanation for driving so early in morning was confusing and contradictory; defendant had extensive criminal history of transporting illegal drugs; defendant had in trunk two unlabeled boxes taped shut; and weight of boxes was consistent with drug packaging).

us.a4.ss.is.050 In determining whether the totality of the circumstances gives rise to a particularized and founded suspicion that the person is engaged in criminal activity, the court must view all of the circumstances together, rather than viewing each individual factor separately; the officers need not rule out the possibility of an innocent explanation for the conduct.

State v. Evans, 237 Ariz. 231, 349 P.3d 205, ¶¶ 11–17 (2015) (officer saw defendant driver "flailing his arms toward the passenger," which caused officer to suspect defendant was assaulting passenger; court held this gave officer reasonable suspicion to stop defendant's vehicle, and officer was not required to rule out possibility of innocent explanation).

us.a4.ss.is.160 If an officer has reasonable basis to conduct an investigatory stop, the officer may detain the suspect for a reasonable time, which is the amount of time necessary to confirm or dispel their suspicions; if the officer detains the suspect longer than is reasonable, it will turn into an arrest, which requires probable cause.

State v. Driscoll, 238 Ariz. 432, 361 P.3d 961, ¶¶ 8–17 (Ct. App. 2015) (after issuing repair order for defective license plate light, officer suspected defendant was involved in other criminal activity, so officer had narcotics dog conduct sniff, which led to evidence of other crimes; court held continued detention was not permissible, but did not apply exclusionary rule because officer acted properly under law in effect at time of stop).

U.S. Const. amend. 4 Search and seizure—Investigative stop and weapons search.

us.a4.ss.ws.010 To conduct a *Terry* stop, the officer must reasonably suspect that the person is or had engaged in criminal activity; to proceed from a stop to a frisk, the officer must have reason to suspect that the person is armed and dangerous; for a traffic stop, the first condition is met whenever it is lawful for the officer to stop and detain the automobile and its occupants, and the officer does not need to have, in addition, cause to believe any occupant of the vehicle is involved in criminal activity.

Gastelum v. Hegi, 237 Ariz. 211, 348 P.3d 907, ¶¶ 8–11 (Ct. App. 2015) (officer made valid traffic stop on vehicle in which defendant was passenger; officer asked defendant to exit vehicle, and because of way defendant turned away from him, officer believed defendant was armed and conducted *Terry* frisk; officer found illegal drugs; trial court found officer had reasonable basis to believe defendant might be armed and did not expressly determine whether officer had reason to believe defendant was dangerous; court held, when encounter is not based on consent and officer has reasonable suspicion both that criminal activity is afoot and person is armed, officer may conduct *Terry* frisk without specifically assessing likelihood person is presently dangerous).

U.S. Const. amend. 4 Search and seizure—Search.

us.a4.ss.sh.040 The use of a detection dog does not constitute a search, so an officer may do so without a warrant or probable cause.

State v. Foncette, 238 Ariz. 42, 356 P.3d 328, ¶¶ 17 (Ct. App. 2015) (defendant contended officer's use of narcotics dog in hallway invaded his reasonable expectation of privacy because it detected information about items inside of room; court stated, "But any interest in possessing contraband cannot be deemed 'legitimate' and thus state actions that reveal only contraband do not compromise any privacy interest that society accepts as reasonable,"thus no violation of defendant's Fourth Amendment rights).

U.S. Const. amend. 4 Search and seizure—Exigent circumstances.

us.a4.ss.ec.010 An officer may search and seize evidence without a warrant if the officer has probable cause and exigent circumstances are present, but may not act without a warrant once the exigent circumstances no longer exist.

State v. Wilson, 237 Ariz. 296, 350 P.3d 800, ¶¶ 13–14 (2015) (defendant told medical personnel he kept in his house duct-tape-wrapped glass jar containing 7 pounds of mercury; court of appeals held there was no showing any person was in immediate danger from mercury, thus exigent circumstances did not exist and emergency aid exception did not apply; state did not seek review on those issues).

U.S. Const. amend. 4 Search and seizure—Plain view, smell, or feel.

us.a4.ss.pvsf.020 Because the Arizona Medical Marijuana Act (AMMA) does not decriminalize possession or use of marijuana, and instead only provides immunity for possession or use of marijuana consistent with the immunity provisions of the AMMA, possession or use of marijuana remains a crime under Arizona law, thus the plain smell of marijuana remains sufficient to establish probable cause.

State v. Cheatham, 237 Ariz. 502, 353 P.3d 382, ¶¶ 2–14 (Ct. App. 2015) (officer stopped defendant's vehicle because it appeared to have window tint that was too dark; when officer spoke to defendant, he noticed strong odor of burnt marijuana from inside vehicle; officer searched vehicle and found marijuana and paraphernalia; trial court denied motion to suppress finding probable cause based on "plain smell" doctrine; court held trial court did not err in denying motion to suppress), *rev. granted,* CR–15–0286–PR (Mar. 15, 2016).

us.a4.ss.pvsf.021 Because the Arizona Medical Marijuana Act (AMMA) provides immunity for possession or use of marijuana consistent with the immunity provisions of the AMMA, the plain smell of marijuana, standing alone, is insufficient to establish probable cause.

State v. Sisco, 238 Ariz. 229, 359 P.3d 1, ¶¶ 8–57 (Ct. App. 2015) (officers smelled overpowering odor of marijuana from particular warehouse and obtained search warrant, but found no marijuana; officers applied for second warrant for nearby building, saying they had narrowed down source of odor; officer found dozens of marijuana plants and growing equipment; court held odor of marijuana was not sufficient to establish probable cause), *rev. granted,* CR–15–0265–PR (Mar. 15, 2016).

U.S. Const. amend. 4 Search and seizure—Search of cell phone obtained pursuant to arrest.

us.a4.ss.cp.010 Officers must generally secure a warrant before conducting a search of a cell phone found on the person of an arrestee.

State v. Ontiveros-Loya, 237 Ariz. 472, 352 P.3d 941, ¶¶ 13–16 (Ct. App. 2015) (defendant assaulted woman, who ran away; officers found defendant in motel room and asked for consent to search room, which defendant gave; officers found firearm magazine and cell phone, and cell phone included photographs of handgun; defendant was found guilty of prohibited possessor charge; court held warrantless search of cell phone was invalid).

U.S. Const. amend. 4 Search and seizure—Search of a person on probation or parole.

us.a4.ss.pop.010 As long as the conditions of release authorize such a search, a warrantless search of a person on **parole** may be conducted even without reasonable suspicion; for a person on **probation,** the search must be reasonable under the totality of the circumstances, which requires that the search be conducted by a probation officer in a proper manner and for a proper purpose in determining whether the probationer is complying with the probation obligations.

State v. Adair, 238 Ariz. 193, 358 P.3d 614, ¶¶ 1–21 (Ct. App. 2015) (confidential informant told police that defendant, who was on probation, was selling crack cocaine; over next few months, informant provided police with additional information; police relayed that information to defendant's probation officer, who conducted warrantless search; trial court granted defendant's motion to suppress ruling that search had to be supported by reasonable suspicion; court reversed, held search had to be reasonable under the totality of the circumstances, and remanded for trial court to rule on defendant's motion to suppress under that standard).

U.S. Const. amend. 4 Search and seizure—Emergency aid and rescue doctrine.

us.a4.ss.ea/rd.010 Officers may conduct a warrantless search to render emergency aid when (1) they have reasonable grounds to believe an emergency exists and someone needs assistance for the protection of life or property, and (2) there is a reasonable basis to associate the emergency with the place being searched.

State v. Bennett, 237 Ariz. 356, 351 P.3d 363, ¶¶ 9–12 (Ct. App. 2015) (police received 9-1-1 hang-up call, which they considered to indicate an emergency, so officers went to address and found no one home; when they went into back yard, they found marijuana; court concluded (1) officers had reasonable grounds to believe emergency was at hand and (2) reasonable basis to associate emergency with area being searched, thus trial court properly denied motion to suppress).

State v. Wilson, 237 Ariz. 296, 350 P.3d 800, ¶¶ 13–14 (2015) (defendant told medical personnel he kept in his house duct-tape-wrapped glass jar containing 7 pounds of mercury; court of appeals held there was no showing any person was in immediate danger from mercury, thus exigent circumstances did not exist and emergency aid exception did not apply; state did not seek review on those issues).

us.a4.ss.ea/rd.015 United States Supreme Court has rejected the requirement that the primary motive is to render aid rather than to arrest or seize property.

State v. Wilson, 237 Ariz. 296, 350 P.3d 800, ¶ 12 (2015) (court noted United States Supreme Court decision superseded Arizona case law that had considered primary motive of officer).

State v. Bennett, 237 Ariz. 356, 351 P.3d 363, ¶¶ 9 n.2 (Ct. App. 2015) (court noted United States Supreme Court rejected requirement that court consider primary motive of officer).

U.S. Const. amend. 4 Search and seizure—Community caretaker doctrine and community caretaking functions.

us.a4.ss.ccf.020 The community caretaker doctrine and community caretaking functions do not apply to homes.

State v. Wilson, 237 Ariz. 296, 350 P.3d 800, ¶¶ 15–24 (2015) (defendant told medical personnel he kept in his house duct-tape-wrapped glass jar containing 7 pounds of mercury; court held community caretaking exception does not apply to homes, and because there was no showing any person was in immediate danger from mercury, emergency aid exception did not apply, thus search without warrant was not permissible).

U.S. Const. amend. 4 Search and seizure—Exclusionary rule and its application.

us.a4.ss.exap.030 If the police conduct a search in compliance with binding precedent that is later overruled, because suppression would do nothing to deter police misconduct in these circumstances, and because it would come at a high cost to both the truth and the public safety, searches conducted in objectively reasonable reliance on binding appellate precedent are not subject to the exclusionary rule.

State v. Reyes, 238 Ariz. 575, 364 P.3d 1134, ¶¶ 5–19 (Ct. App. 2015) (in April 2012, defendant crashed vehicle into building and was taken to hospital for treatment for non-life-threatening injuries, and hospital personnel drew a sample of his blood; defendant refused to consent to officer's request for blood sample; officer did not seek warrant because he knew he could obtain portion of blood drawn by hospital personnel, but acknowledged there was sufficient time to have requested warrant; defendant conceded officer had probable cause to believe he had violated DUI statute and sample was taken for medical purposes; trial court stated it would have suppressed evidence if blood draw had occurred after 4/14/2013 when *Missouri v. McNeely* was decided, but denied motion to suppress; court did not apply exclusionary rule pursuant to *Davis v. United States,* 131 S. Ct. 2419 (2011), and held trial court did not err in denying motion to suppress).

State v. Driscoll, 238 Ariz. 432, 361 P.3d 961, ¶¶ 11–17 (Ct. App. 2015) (after issuing repair order for defective license plate light, officer suspected defendant was involved in other criminal activity, so officer had narcotics dog conduct sniff, which led to evidence of other crimes; court held continued detention was not permissible, but did not apply exclusionary rule because officer acted properly under law in effect at time of stop).

State v. Ontiveros-Loya, 237 Ariz. 472, 352 P.3d 941, ¶ 13 n.3 (Ct. App. 2015) (officers found defendant in motel room and asked for consent to search room, which defendant gave; officers found cell phone, and cell phone included photographs of handgun; defendant contended search was not proper under *Riley v. California,* 134 S. Ct. 2473 (2014); court noted defendant was sentenced before *Riley* was decided, but cited *Davis v. United States,* 131 S. Ct. 2419 (2011), for the proposition that "newly announced rules of constitutional criminal procedure must apply 'retroactively to all cases, state or federal, pending on direct review or not yet final, with no exception,' " *Davis,* 131 S. Ct. at 2430, *quoting Griffith v. Kentucky,* 479 U.S. 314 (1987); court failed to discuss analysis in *Davis* of separate concepts of retroactivity, which concerns whether new doctrine is available on direct review, and exclusionary rule, which concerns whether new doctrine should serve to exclude evidence, *Davis,* 131 S. Ct. at 2430–31).

us.a4.ss.exap.050 Because a search under the emergency aid exception is reasonable and because the court does not want to deter officers from engaging in searches to protect life or property, the exclusionary rule does not apply to the emergency aid exception.

State v. Bennett, 237 Ariz. 356, 351 P.3d 363, ¶ 14 (Ct. App. 2015) (police received 9-1-1 hang-up call, which they considered to indicate an emergency, so officers went to address and found no one home; when they went into back yard, they found marijuana; court concluded (1) officers had reasonable grounds to believe emergency was at hand and (2) reasonable basis to associate emergency with area being searched, thus trial court properly in denying motion to suppress).

U.S. Const. amend. 5 Double jeopardy.

us.a5.dj.040 The guarantee against double jeopardy protects against a second prosecution for the same offense after conviction or acquittal, even when the acquittal was erroneous.

State ex rel. Montgomery v. Rogers (Morgan), 237 Ariz. 419, 352 P.3d 451, ¶¶ 8–14 (Ct. App. 2015) (test showed defendant's BAC was 0.17; state charged defendant with DUI under (A)(1) (driving while impaired), (A)(2) (BAC ≥ 0.08, and (A)(3) (BAC ≥ 0.15; jurors acquitted defendant of (A)(3) charge, but were unable to reach verdict on (A)(1) and (A)(2) charges, so state retried defendant on those charges; trial court proposed to instruct jurors that it had been previously determined evidence did not prove beyond reasonable doubt defendant's BAC was 0.15 or more and they "shall accept this determination as a fact"; court held acquittal by first jury did not constitute judicial determination that blood test was unreliable, so proposed jury instruction was erroneous as matter of law).

us.a5.dj.080 The guarantee against double jeopardy bars the government from prosecuting a defendant twice for the same offense; this does not apply if each offense contains an element that the other does not, and in making this determination, the court analyzes only the elements of the offense, not the facts of the case.

State v. Harm, 236 Ariz. 402, 340 P.3d 1110, ¶¶ 15–20 (Ct. App. 2015) (when arrested for trespassing by black police officer, defendant threatened retaliation by Ayran Brotherhood; jurors found defendant guilty of threatening or intimidating and not guilty of assisting criminal street gang by committing felony offense, but in the aggravation phase found state proved beyond reasonable doubt defendant committed threatening or intimidating with intent to promote or further assist any criminal conduct by criminal street gang; because crime of assisting criminal street gang under A.R.S. § 13–2321(B) and enhancement of the sentence under A.R.S. § 13–714 for offense committed with intent to promote, further, or assist criminal street gang have different elements, if defendant has been acquitted of charge of assisting criminal street gang, double jeopardy does not preclude enhancement of sentence for offense committed with intent to promote, further, or assist criminal street gang, thus double jeopardy did not preclude enhancement of sentence).

us.a5.dj.130 Double jeopardy does not apply to sentence enhancement.

State v. Harm, 236 Ariz. 402, 340 P.3d 1110, ¶ 23 (Ct. App. 2015) (when arrested for trespassing by black police officer, defendant threatened retaliation by Ayran Brotherhood; jurors found defendant guilty of threatening or intimidating and not guilty of assisting criminal street gang by committing felony offense, but in the aggravation phase found state proved beyond reasonable doubt defendant committed threatening or intimidating with intent to promote or further assist any criminal conduct by criminal street gang; because crime of assisting criminal street gang under A.R.S. § 13–2321(B) and enhancement of the sentence under A.R.S. § 13–714 for offense committed with intent

to promote, further, or assist criminal street gang have different elements, if defendant has been acquitted of charge of assisting criminal street gang, double jeopardy does not preclude enhancement of sentence for offense committed with intent to promote, further, or assist criminal street gang, thus double jeopardy did not preclude enhancement of sentence; court further held double jeopardy does not apply to sentence enhancement).

us.a5.dj.180 If the trial court grants a motion for new trial, nothing precludes the state from dismissing the charges and pursuing an appeal because, if the appellate court rules in favor of the state, the appellate court will then reinstate the original charges and the jury verdict.

State v. Fischer, 238 Ariz. 309, 360 P.3d 105, ¶¶ 8–11 (Ct. App. 2015) (court rejected defendant's contention that appeal was moot because state had dismissed charges because it planned to appeal trial court's granting of new trial for defendant), *rev. granted,* CR–15–0265–PR (Mar. 15, 2016).

us.a5.dj.210 If the trial court orders a mistrial *sua sponte* or over the defendant's objection, double jeopardy precludes a retrial unless there was a manifest necessity for granting the mistrial.

State v. Woods, 237 Ariz. 214, 348 P.3d 910, ¶¶ 4–22 (Ct. App. 2015) (trial court granted mistrial because victim-witness was unruly and was arrested; because trial court did not thoroughly assess if events had effect on jurors, trial court did not properly determine whether there was manifest necessity for granting mistrial, thus retrial violated defendant's double jeopardy rights).

U.S. Const. amend. 5 Double jeopardy—Collateral estoppel and res judicata.

us.a5.dj.ce&rj.020 Collateral estoppel does not preclude state from proceeding in a subsequent action unless (1) the same parties were involved in both actions, (2) the party against whom the earlier decision is asserted had a full and fair opportunity to litigate the issue involved, (3) the same issue of ultimate fact is to be litigated in the subsequent proceeding as was determined in the prior proceeding, (4) same burden of proof applies in both proceedings, and (5) the previous judgment is valid and final.

State v. Greenberg, 236 Ariz. 592, 343 P.3d 462, ¶¶ 28–37 (Ct. App. 2015) (police suspected defendant of trespass and looking through window at juvenile female; police interviewed defendant, and he confessed to trespass (8/27 confession); police developed further information about defendant and obtained warrant to search his home and car; police found numerous CDS and DVDs containing child pornography, sexually explicit videos of unknowing victims filmed by defendant, and hand-held camera; police again interviewed defendant, and he confessed owning evidence police found (8/31 confession); state charged defendant with trespass and 10 counts of sexual exploitation of minor; defendant moved to suppress 8/27 confession and evidence seized from his home; trial court suppressed 8/27 confession on basis that it was result of implied promise and suppressed evidence because it concluded affidavit did not provide magistrate with probable cause; state dismissed all charges except 8/27 trespass charge and appealed suppression of seized evidence, but did not appeal suppression of 8/27 confession; during pendency of appeal, defendant pled guilty to 8/27 trespass charge; on appeal, court held trial court erred in suppressing seized evidence; following remand, state filed numerous charges against defendant under new cause number that was assigned to different judge; defendant moved to suppress both confession and contended trial court was barred from reconsidering 8/27 confession; trial court ruled both confessions were admissible; court held original suppression ruling was interlocutory and not final, thus there was not "final judgment" and thus collateral estoppel did not preclude second judge from reconsidering suppression of 8/27 confession).

U.S. Const. amend. 5 Double jeopardy—Elements.

us.a5.dj.elmnt.020 The guarantee against double jeopardy does not bar multiple prosecutions or multiple punishments as long as each charged offense requires proof of at least one element not required for the other offense.

State v. Carlson, 237 Ariz. 381, 351 P.3d 1079, ¶ 84 (2015) (court held consecutive sentences for kidnapping and felony murder did not violate Double Jeopardy Clause).

U.S. Const. amend. 5 Self-incrimination—Voluntariness.

us.a5.si.vol.030 Although a suspect's statement is presumptively involuntary and the state has the burden of proving that the statement is voluntary, the state meets its burden if it offers testimony that the confession was obtained without threat, coercion, or promise of immunity or a lesser penalty.

State v. Greenberg, 236 Ariz. 592, 343 P.3d 462, ¶¶ 20–23 (Ct. App. 2015) (police discussed charging defendant with misdemeanor, but then charged him with several felonies; defendant contended "implied promise" that he would be charged with misdemeanor made confession involuntary; court stated alleged promise couched in terms of mere possibility or opinion is not sufficient to render confession involuntary, and held record supported trial court's determination that police made no express or implied promise).

us.a5.si.vol.040 A confession will be found involuntary if (1) the officers engaged in impermissible conduct, or (2) the officers exercised coercive pressure that was not dispelled, or (3) the confession was derived from a prior involuntary statement.

State v. Greenberg, 236 Ariz. 592, 343 P.3d 462, ¶ 20 (Ct. App. 2015) (defendant contended first confession was involuntary because police illegally arrested him at his home; record supported trial court's finding that defendant was never "under arrest" because he freely chose to accompany police to station).

us.a5.si.vol.140 Although a confession is deemed involuntary if the officers exercised **coercive pressure** that was not dispelled, advising the defendant to tell the truth, unaccompanied by either a threat or promise, does not make a confession involuntary.

State v. Greenberg, 236 Ariz. 592, 343 P.3d 462, ¶ 21 (Ct. App. 2015) (court stated encouragement from police to tell truth is proper interrogation tactic).

U.S. Const. amend. 5 Self-incrimination—Voluntariness and knowledge.

us.a5.si.v&k.010 The Constitution does not require the police to give the person being questioned a complete explanation of the reason for the questioning, the objectives sought, the evidence already in hand, and the strength of the case being built.

State v. Greenberg, 236 Ariz. 592, 343 P.3d 462, ¶ 23 (Ct. App. 2015) (police discussed charging defendant with misdemeanor, but then charged him with several felonies; defendant contended police told him he was going to be charged with misdemeanor to coax him into confessing; court stated defendant's ignorance of full consequences of decision does not vitiate voluntariness of statement).

U.S. Const. amend. 5 Self-incrimination—*Miranda.*

us.a5.si.mir.050 If the suspect is not in custody, officers are not required to give *Miranda* warnings for questions that are part of an investigation or to determine whether a crime is or was being committed.

State v. Maciel, 238 Ariz. 200, 358 P.3d 621, ¶¶ 8–25 (Ct. App. 2015) (person observed defendant seated next to vacant building with broken window; when officer arrived, defendant denied any knowledge of removal of board from window; officer asked defendant to sit in patrol car, and when another officer arrived, asked defendant to sit on curb next to building; person from building next door told officers board had been in place over window 3 days earlier; officer again asked defendant about window, and defendant said he had removed board and entered building to look for money; court held defendant was not in custody, and officers were asking questions to determine whether crime had been committed).

us.a5.si.mir.070 *Miranda* warnings are not required when the purpose of the questioning is the safety of the public (public safety) or of the officer involved, which occurs when there is an objectively reasonable need to protect the public or the officer from any immediate danger.

State v. Leteve, 237 Ariz. 516, 354 P.3d 393, ¶¶ 4–10 (2015) (defendant shot and killed his two sons, ages 1 and 5, shot himself, and called 9-1-1; operator could not understand him and thought he killed one son, age 15; police arrived; saw defendant bleeding from face, handcuffed him, and asked what had happened; defendant said he had killed his children; state agreed defendant was in custody; court held officers reasonably asked questions to assess what had occurred and thus trial court correctly denied motion to suppress statements).

U.S. Const. amend. 5 Self-incrimination—*Miranda*—Waiver.

us.a5.si.mir.wav.070 If a person is in custody, has received the *Miranda* warnings, and is subject to custodial interrogation, the person must clearly and unambiguously invoke **the right to remain silent,** which must be judged from the perspective of a reasonable police officer in the circumstances.

State v. Cornman, 237 Ariz. 350, 351 P.3d 357, ¶¶ 9–11 (Ct. App. 2015) (after officer read defendant his *Miranda* rights at his home and defendant made some statements, questioning resumed at police station, with officer saying, "Do you remember your rights that I read to you up there at your house?" and defendant saying, "Anything I might say might be used against me in a court of law so I can't say anything more"; court held record supported trial court's determination that defendant did not unambiguously invoke his right to remain silent, thus trial court correctly denied motion to suppress).

U.S. Const. amend. 5 Self-incrimination—Comment on right to remain silent.

us.a5.si.cms.010 When a defendant is not induced into silence by *Miranda* warnings, the state may comment on the defendant's silence.

State v. Burns, 237 Ariz. 1, 344 P.3d 303, ¶¶ 150–51 (2015) (after defendant was arrested, police asked him where victim's body was located; defendant just got "real quiet, clos[ed] his eyes, and just sh[ook] his head"; because this occurred before defendant invoked his right to remain silent, prosecutor did not err in commenting on this).

U.S. Const. amend. 6 Notice of charges.

us.a6.nt.010 The Sixth Amendment grants a defendant the right to notice of the nature and cause of the accusations and a copy of the charging document.

State v. Lua, 237 Ariz. 301, 350 P.3d 805, ¶¶ 17–18 (2015) (defendant was charged with attempted second-degree murder; evidence was presented that defendant may have attacked victim upon sudden quarrel or heat of passion resulting from adequate provocation by the victim; although provocation manslaughter is not lesser-included offense of second-degree murder, because evidence showed defendant could have committed provocation manslaughter, trial court correctly instructed jurors on that offense; because provocation manslaughter does not substantively change nature of offense with which defendant was charged, defendant received adequate notice).

U.S. Const. amend. 6 Confrontation and cross-examination.

us.a6.cf.020 A defendant who has been allowed self-representation has the right to cross-examine the witnesses personally, and this right may be abrogated only if the state makes a showing that such cross-examination will injure the physical or psychological well-being of the witness.

State ex rel. Montgomery v. Padilla (Simcox), 237 Ariz. 263, 349 P.3d 1100, ¶¶ 9–24 (Ct. App. 2015) (defendant was charged with sexual offenses with minors; victims were defendant's 8-year-old daughter and daughter's 8-year-old friend; state also intended to call daughter's 7-year-old friend to testify about alleged incident she had with defendant; because state did not make showing that defendant's cross-examination of victim-witnesses would injure their physical or psychological well-being; trial court correctly allowed defendant right to cross-examine victim-witnesses).

U.S. Const. amend. 6 Counsel—Ineffective assistance of counsel; Performance.

us.a6.cs.iac.135 The determination of which instructions to request is a strategic or tactical decision, and will support a claim of ineffective assistance of counsel only if there was no reasonable basis for the action taken.

State v. Speers, 238 Ariz. 423, 361 P.3d 952, ¶¶ 15–24 (Ct. App. 2015) (contributing to delinquency of child is lesser-included offense of child molestation, but defendant's attorney chose to withdraw that instruction because she thought she could not argue it in light of defendant's defense that he never inappropriately touched victims; because defendant's attorney was incorrect in that reasoning, defendant stated colorable claim of ineffective assistance of counsel).

U.S. Const. amend. 6 Counsel—Ineffective assistance of counsel; Prejudice.

us.a6.cs.iac.210 In order to prevail on a claim of ineffective assistance of counsel, the defendant must establish that there was a reasonable probability of a different result had counsel performed differently.

State v. Roseberry, 237 Ariz. 507, 353 P.3d 847, ¶¶ 10–18 (2015) (defendant contended appellate counsel was ineffective because counsel failed to raise on appeal trial court's instruction to jurors not to consider mitigation evidence unless defense proved causal nexus between mitigation and crime; because on review Arizona Supreme Court considered mitigation evidence without requiring defense to prove causal nexus between mitigation and crime, defendant was not prejudiced).

U.S. Const. amend. 14 Due process—Vagueness.

us.a14.dp.vg.060 If a defendant is challenging the statute on its face, rather than as applied to that defendant, the standing requirement does not apply and the defendant may challenge the statute on the basis that it may affect the conduct of others.

State v. Burke, 238 Ariz. 322, 360 P.3d 118, ¶ 5 (Ct. App. 2015) (defendant contended A.R.S. § 28–622(A), which prohibits wilfully refusing or failing to comply with lawful order or direction of police officer, was unconstitutionally vague).

U.S. Const. amend. 14 Due process—Outrageous government conduct.

us.a14.dp.ogc.010 Outrageous government conduct is grounded in due process principles and is resolved by the trial court as a matter of law before trial, while entrapment is based on public policy considerations and is determined by the trier-of-fact in light of the evidence presented at trial.

State v. Williamson, 236 Ariz. 550, 343 P.3d 1, ¶ 10 (Ct. App. 2015) (confidential informant told undercover officers there was a home invasion crew lined up to go to work; officers met with person and later with defendant and others; told them plan they had devised, and agreed on a price; at later meeting, defendant and others arrived with some of their own supplies, and officers showed them weapons they could use; as defendant and others were selecting weapons they would use, SWAT team arrived and arrested them; court found no outrageous government conduct).

us.a14.dp.ogc.020 To establish a claim of outrageous government conduct, the defendant must show either (1) the government engineered and directed a criminal enterprise from start to finish, or (2) the government used excessive physical or mental coercion to induce the defendant to commit the crime, and differs from entrapment because entrapment focuses on whether the defendant was predisposed to commit the crime, while outrageous government conduct focuses on the government's conduct under the totality of the circumstances, including the following factors: (1) known criminal characteristics of the defendants; (2) individualized suspicion of the defendants; (3) the government's role in creating the crime of conviction; (4) the government's encouragement of the defendants to commit the offense conduct; (5) the nature of the government's participation in the offense conduct; and (6) the nature of the crime being pursued and necessity for the actions taken in light of the nature of the criminal enterprise at issue.

State v. Williamson, 236 Ariz. 550, 343 P.3d 1, ¶¶ 11–12 (Ct. App. 2015) (confidential informant told undercover officers there was a home invasion crew lined up to go to work; officers met with person and later with defendant and others; told them plan they had devised, and agreed on a price; at later meeting, defendant and others arrived with some of their own supplies, and officers showed them weapons they could use; as defendant and others were selecting weapons they would use, SWAT team arrived and arrested them; court analyzed six factors listed above and found no outrageous government conduct).

U.S. Const. amend. 14 Due process—Collection, retention, and disclosure of evidence.

us.a14.dp.ev.020 When the state has failed to preserve evidence the exculpatory nature of which is unknown or is only potentially exculpatory, the defendant must show the state acted in bad faith in order to show a due process violation.

State v. Carlson, 237 Ariz. 381, 351 P.3d 1079, ¶ 42 (2015) (defendant contended state did not acquire cell phone and cell phone records from residence where victims lived; because defendant did not present any evidence state acted in bad faith, defendant failed to show due process violation).

U.S. Const. amend. 14 Due process—Identification procedures.

us.a14.dp.id.010 At a pre-trial suppression hearing, the trial court's role is to evaluate the reliability of the identification, which is a legal determination, and not the credibility of the witnesses, which is for the jurors to determine; the trial court should withhold identification testimony from the jurors only if there is a very substantial likelihood that the witness had mis-identified the defendant; because this is a legal determination, an appellate court may make a reliability determination in the first instance.

State v. Rojo-Valenzuela, 237 Ariz. 448, 352 P.3d 917, ¶¶ 1–16 (2015) (officer chased suspect, who scaled wall of residence; as officer got out of patrol vehicle, shots were fired striking hood and windshield; officer did not see shooter's face, but did take note of shooter's build and clothing; video camera on vehicle's dashboard recorded entire event; other officers located several suspects and conducted series of show-ups; officer identified defendant as shooter based on clothing, shoes, and physical statute; after holding *Dessureault* hearing, trial court did not make any findings about procedure's suggestiveness or identification's reliability because it did "not find this to be a typical identification that would be the subject of a suppression motion"; court held appellate court may make reliability determination in first instance and agreed with court of appeals that identification was reliable and therefore admissible).

Ariz. Const. art. 2, sec. 2.1(A)(3). Victim's rights — Right to be present.

az.2.2.1.a.3.020 The victim's right to be present at the restitution hearing does not give the victim's attorney the right to substitute for the prosecutor in restitution proceedings

Lindsay R. v. Cohen (Meyn), 236 Ariz. 565, 343 P.3d 435, ¶ 7 (Ct. App. 2015) (trial court ordered that victim's attorney was not entitled to conduct restitution hearing).

Ariz. Const. art. 2, sec. 2.1(A)(8). Victim's rights — Right to receive restitution.

az.2.2.1.a.8.020 The victim's right to receive restitution does not give the victim's attorney the right to substitute for the prosecutor in restitution proceedings

Lindsay R. v. Cohen (Meyn), 236 Ariz. 565, 343 P.3d 435, ¶ 7 (Ct. App. 2015) (trial court ordered that victim's attorney was not entitled to conduct restitution hearing).

Ariz. Const. art. 2, sec. 2.1(C). Victim's rights—Definition of "victim."

az.2.2.1.c.050 A.R.S. § 13–4401(19) provides that, if a person is killed or incapacitated, "victim" includes that person's spouse, parent, child, grandparent, or sibling, or any other person related to the second degree by consanguinity or affinity, or any other lawful representative.

Allen v. Sanders, 237 Ariz. 93, 347 P.3d 30, ¶¶ 2–14 (Ct. App. 2015) (KD was child of father and M; AD was child of mother and F; father and mother were now married; court held "affinity" meant relationship between one spouse and other spouse's blood relatives, but did not include one spouse's blood relatives and other spouse's blood relatives; defendant was charged with various crimes arising out of death of AD; court held Victim's Bill of Rights did not preclude defendant from interviewing KD).

Ariz. Const. art. 2, sec. 23. Trial by jury—Right to a jury.

az.2.23.ruj.020 Although a defendant is entitled to a unanimous jury verdict on whether the criminal act charged was committed, the trial court is not entitled to a unanimous jury verdict on the precise manner in which the act was committed.

State v. West, 238 Ariz. 482, 362 P.3d 1049, ¶¶ 13–30 (Ct. App. 2015) (defendant was charged with committing child abuse, which could be committed in three ways; court concluded evidence supported defendant's conviction based on all three means of committing that crime, thus defendant was not entitled to unanimous determination on which way she committed it).

April 5, 2016

1–215(41) Definitions. (Wilfully or Willfully.)

.010 The definition of "wilfully" or "willfully" is equivalent to the definition of "knowingly," thus proof that a person acted "intentionally" will suffice to prove a person acted "wilfully."

State v. Burke, 238 Ariz. 322, 360 P.3d 118, ¶¶ 7–10 (Ct. App. 2015) (court rejected defendant's claim that A.R.S. § 28–622(A) was unconstitutionally vague because it had mental state of "wilfully"; court further rejected defendant's contention that "wilfully fail" was contradiction in terms).

9–499.13 Sign walkers; regulation.

.010 The regulation of sign walkers (*i.e.,* persons who wear, hold, or balance a sign) is a matter of statewide interest and thus this statute, which prohibits an outright ban on sign walkers, preempts any municipal ordinance in conflict with this statute.

City of Scottsdale v. State, 237 Ariz. 467, 352 P.3d 936, ¶¶ 1–23 (Ct. App. 2015) (court upheld trial court's ruling that state statute preempted Scottsdale ordinance that prohibites persons from having, bearing, wearing, or carrying any advertising banner, flag, board, sign, transparency, wearing apparel, or other device on any street).

13–116 Double punishment.

.070 In order to impose consecutive sentences for two crimes, the transaction must satisfy **two** tests: **First,** whether, after subtracting the facts necessary to support the primary charge, there are sufficient facts to support the secondary charge.

State v. Carlson, 237 Ariz. 381, 351 P.3d 1079, ¶¶ 78–83 (2015) (defendant received consecutive sentences for murder and kidnapping; because, after subtracting murder from factual transaction, kidnapping remains, convictions satisfied that part of test).

.080 In order to impose consecutive sentences for two crimes, the transaction must satisfy **two** tests: **Second,** either (1) the defendant could have committed the primary crime without committing the secondary crime, or (2) if the defendant could not have committed the primary crime without committing the secondary crime, the defendant's commission of the secondary crime exposed the victim to more potential harm than necessary in committing the primary crime.

State v. Carlson, 237 Ariz. 381, 351 P.3d 1079, ¶¶ 78–83 (2015) (defendant received consecutive sentences for murder and kidnapping; because defendant could have committed murder without committing kidnapping and could have committed kidnapping without committing murder; and because kidnapping created risk of emotional and physical harm in addition to harm caused by murder, convictions satisfied that part of test).

.090 Sentences for felony murder and the predicate felony may run consecutively.

State v. Carlson, 237 Ariz. 381, 351 P.3d 1079, ¶ 83 (2015) (court declined defendant's invitation to overrule *State v. Girdler,* 138 Ariz. 482, 488–89, 675 P.2d 1301, 1307–08 (1983)).

13–206(B) Entrapment—Elements.

us.a14.dp.ogc.010 Outrageous government conduct is grounded in due process principles and is resolved by the trial court as a matter of law before trial, while entrapment is based on public policy considerations and is determined by the trier-of-fact in light of the evidence presented at trial.

State v. Williamson, 236 Ariz. 550, 343 P.3d 1, ¶ 10 (Ct. App. 2015) (confidential informant told undercover officers there was a home invasion crew lined up to go to work; officers met with person and later with defendant and others; told them plan they had devised, and agreed on a price; at later meeting, defendant and others arrived with some of their own supplies, and officers showed them weapons they could use; as defendant and others were selecting weapons they would use, SWAT team arrived and arrested them; court found no outrageous government conduct).

.020 It is an affirmative defense to a criminal charge that the person was entrapped, and to claim entrapment, the person must admit by the person's testimony or other evidence the substantial elements of the offense charged.

State v. Gray, 238 Ariz. 147, 357 P.3d 831, ¶¶ 6–12 (Ct. App. 2015) (court rejected defendant's contention (1) that his decision not to challenge state's evidence during trial was sufficient; (2) that his statement on audio recording was implicit admission; defendant must affirmatively admit elements of offense charged; trial court thus properly ruled defendant was not entitled to entrapment instruction), *rev. granted,* CR–15–0293–PR (Feb. 9, 2016).

State v. Williamson, 236 Ariz. 550, 343 P.3d 1, ¶¶ 48–51 (Ct. App. 2015) (trial court did not abuse discretion in requiring defendant to stipulate to elements of offenses in order to receive jury instruction on affirmative defense of entrapment).

.030 Entrapment focuses on whether the defendant was predisposed to commit the crime, while outrageous government conduct focuses on the government's conduct under the totality of the circumstances, including the following factors: (1) known criminal characteristics of the defendants; (2) individualized suspicion of the defendants; (3) the government's role in creating the crime of conviction; (4) the government's encouragement of the defendants to commit the offense conduct; (5) the nature of the government's participation in the offense conduct; and (6) the nature of the crime being pursued and necessity for the actions taken in light of the nature of the criminal enterprise at issue.

State v. Williamson, 236 Ariz. 550, 343 P.3d 1, ¶¶ 8–26 (Ct. App. 2015) (confidential informant told undercover officers there was a home invasion crew lined up to go to work; officers met with person and later with defendant and others; told them plan they had devised, and agreed on a price; at later meeting, defendant and others arrived with some of their own supplies, and officers showed them weapons they could use; as defendant and others were selecting weapons they would use, SWAT team arrived and arrested them; court analyzed six factors listed above and found no outrageous government conduct).

13–206(B) Entrapment—Burden of proof.

.020 A defendant asserting an entrapment defense has the burden of proving the following **three** elements by clear and convincing evidence: (1) the idea of committing the offense started with law enforcement officers or their agents; (2) the law enforcement officers or their agents urged and induced the defendant to commit the offense; and (3) the defendant was not predisposed to commit the type of offense charged before the law enforcement officers or their agents urged and induced the defendant to commit the offense.

State v. Williamson, 236 Ariz. 550, 343 P.3d 1, ¶¶ 41–46 (Ct. App. 2015) (evidence was sufficient for jurors to find defendant was not induced to commit charged offenses, and even if he was, he was predisposed to commit them).

13–404(B)(2) Justification; self-defense—Force not justified in resisting arrest.

.020 A person is not entitled to a jury instruction on the use or threat to use physical force unless there is evidence to support that claim of justification.

State v. Vassell, 238 Ariz. 281, 359 P.3d 1025, ¶¶ 8–17 (Ct. App. 2015) (SWAT team entered defendant's home to execute "no knock" warrant; defendant did not claim that police used unlawful or excessive physical force, but maintained instead there was question of fact whether he knew or should have known they were peace officers and not home invaders; court held that, because there was no evidence to support defendant's contention that he did not know intruders were peace officers, trial court did not abuse discretion in refusing to give defendant's requested instruction).

13–411(A) Justification; use of force in crime prevention—Justification.

.010 The justification defense in this section allows a person to use force if and to the extent the person reasonably believes that force is immediately necessary to prevent the commission of certain crimes.

State v. Almeida, 238 Ariz. 77, 356 P.3d 822, ¶¶ 7–26 (Ct. App. 2015) (in road-rage incident, victim was alone in vehicle while defendant was in his vehicle with his fiancée and their 4-year-old son; after certain driving behavior, victim drove beside defendant's vehicle and waived gun in air; at stop sign, defendant got out of vehicle and stood beside it holding his own gun; court held trial court properly instructed on self-defense, defense of others, and defensive display of firearm; court held trial court erred in not instructing on use of force in crime prevention, and further held error was not harmless because (1) given instructions and requested instruction covered different kinds of conduct and (2) justification under 13–411 contains presumption of reasonableness).

13–503 Effect of alcohol or drug use.

.050 Temporary intoxication from a psychoactive drug obtained pursuant to a medical prescription is not a defense for any criminal act or required state of mind if the intoxication was from the abuse of the drug, but it is a defense if it was from the non-abusive use of the drug; in order to prove the non-abusive use of a drug, the defendant is not limited to the defendant's own testimony.

State v. Leteve, 237 Ariz. 516, 354 P.3d 393, ¶¶ 27–30 (2015) (after defendant's wife had filed for divorce, defendant shot and killed their two sons, age 1 and 5; defendant sought to introduce (1) expert testimony derived from interviews with him about his use of prescription drugs, (2) circumstantial evidence in form of testimony from others that he was taking prescription drugs; and (3) pharmacy records identifying his prescribed drugs; court held trial court erred by limiting any evidence about use of medication unless defendant testified; court held error was harmless in light of evidence that defendant acted systematically and deliberately).

13–603(C) Authorized disposition of offenders—Restitution.

.120 A victim's reimbursement from a collateral source does not reduce a defendant's restitution obligation; at most such reimbursement, if made by a qualifying entity, would require a defendant to pay restitution to the entity instead of the already-compensated victim.

State v. Leteve, 237 Ariz. 516, 354 P.3d 393, ¶ 61 (2015) (court rejected defendant's argument that restitution should be reduced by amount victim received from charitable fund established after defendant murdered their children).

13–703(A) Repetitive offenders; sentencing—Conviction for three or more felony offenses not committed on the same occasion.

.010 A person who is convicted of three or more offenses that were not committed on the same occasion and are either consolidated for trial purposes or are not historical prior felony convictions is subject to a higher sentencing range, thus this determination must either be (1) found by the jurors, (2) inherent in the jurors' verdict, or (3) otherwise excepted from *Alleyne* and *Apprendi.*

State v. Ortiz, 238 Ariz. 329, 360 P.3d 125, ¶¶ 60–79 (Ct. App. 2015) (court held trial court erred in determining that offenses had been committed on separate occasions, but concluded any error was harmless).

13–705 Dangerous crimes against children.

.010 This section requires that sentences imposed on a defendant convicted of certain dangerous crimes against children run consecutively even when the underlying convictions arise from a single act; because this statute is more recent than A.R.S. § 13–116, it controls.

State v. Felix, 237 Ariz. 280, 349 P.3d 1117, ¶ 36 (Ct. App. 2015) (court followed *State v. Jones,* 235 Ariz. 501, 334 P.3d 191 (2014)).

13–705(P) Dangerous crimes against children—Victim under 15 years of age.

.010 The defendant need not know the age of the victim when committing the offense for it to qualify as a dangerous crime against children; the only requirement is that the defendant's conduct was focused on, directed against, aimed at, or targeted a victim under the age of 15.

State v. Felix, 237 Ariz. 280, 349 P.3d 1117, ¶¶ 33–35 (Ct. App. 2015) (shooter fired nine large-caliber high-velocity bullets in multiple bursts from AK–47 into house at 5:00 a.m.; defendant knew 16-month-old girl lived in house with parents and that by indiscriminately shooting assault rifle into house at 5:00 a.m., it was likely that he would be directing shots at girl).

13–714 Offenses committed with intent to promote, further, or assist a criminal street gang.

.010 The crime of assisting a criminal street gang under A.R.S. § 13–2321(B) and the enhancement of the sentence under A.R.S. § 13–714 for an offense committed with intent to promote, further, or assist a criminal street gang have different elements, thus if a defendant has been acquitted of a charge of assisting a criminal street gang, double jeopardy does not preclude the enhancement of the sentence for an offense committed with intent to promote, further, or assist a criminal street gang.

State v. Harm, 236 Ariz. 402, 340 P.3d 1110, ¶¶ 15–20 (Ct. App. 2015) (when arrested for trespassing by black police officer, defendant threatened retaliation by Ayran Brotherhood; jurors found defendant guilty of threatening or intimidating and not guilty of assisting criminal street gang by committing felony offense, but in the aggravation phase found state proved beyond reasonable doubt defendant committed threatening or intimidating with intent to promote or further assist any criminal conduct by criminal street gang; court held double jeopardy did not preclude enhancement of sentence).

13–804(B) Restitution for offenses causing economic loss; fine for reimbursement of public monies—Amount of restitution.

.090 The law does not require a victim to provide itemized billing statements.

State v. Leteve, 237 Ariz. 516, 354 P.3d 393, ¶ 59 (2015) (trial court ordered defendant to pay restitution for out-of-pocket expenses to attend trial and attorney fees incurred to enforce victim's rights; because trial court held hearing on requested restitution and received evidence, including affidavits, to which defendant could object, court held evidence supported trial court's restitution order).

13–901(A) Probation—Conditions of probation.

.040 If the defendant is certified to use marijuana under the AMMA, the trial court may not impose as a condition of probation that the defendant may not use marijuana.

State ex rel. Polk v. Hancock (Ferrell), 237 Ariz. 125, 347 P.3d 142, ¶¶ 7–23 (2015) (defendant pled guilty to DUI; plea agreement provided that, as a condition of probation, defendant would not buy, grow, possess, consume, or use marijuana; court held trial court could not impose such condition, but state was then permitted to withdraw from plea agreement).

Reed-Kaliher v. Hoggate, 237 Ariz. 119, 347 P.3d 136, ¶¶ 6–25 (2015) (once defendant obtained certification to use marijuana under AMMA, trial court abused discretion in refusing to modify conditions of probation to remove prohibition against using marijuana).

13–1103 Manslaughter.

.020 A lesser-included offense is one that contains fewer elements than the greater offense; although manslaughter under A.R.S. § 13–1103(A)(2) is second-degree murder committed upon a sudden quarrel or heat of passion resulting from adequate provocation by the victim, the "sudden quarrel or heat of passion resulting from adequate provocation by the victim" is not an element the state must prove, thus manslaughter under section (A)(2) is not a lesser-included offense of second-degree murder.

State v. Lua, 237 Ariz. 301, 350 P.3d 805, ¶¶ 7–10 (2015) (after verbal altercation, victim ran toward defendant's vehicle with hand behind back, so defendant shot him).

13–1104 Second-degree murder.

.020 Although a person is guilty of second-degree murder if the person knows the conduct will cause death or serious physical injury, it is not murder unless the person dies, thus a person is not guilty of attempted second-degree murder if the person intends only to cause serious physical injury; it is only attempted second-degree murder if the person intends or knows the conduct will cause death.

State v. Felix, 237 Ariz. 280, 349 P.3d 1117, ¶¶ 12–14 (Ct. App. 2015) (court follows *State v. Ontiveros,* 206 Ariz. 539 (Ct. App. 2003)).

State v. Juarez-Orci, 236 Ariz. 520, 342 P.3d 856, ¶¶ 13–16 (Ct. App. 2015) (instructions were not materially different from those provided in *State v. Dickinson,* 233 Ariz. 527 (Ct. App. 2013)).

13–1105 First-degree murder—Premeditated.

.010 To prove premeditated first-degree murder, the state must prove to the jurors beyond a reasonable doubt the defendant actually reflected; to the extent the statute provides that "proof of actual reflection is not required," that only means proof by direct evidence is not required, thus the state may prove reflection by circumstantial evidence, such as the passage of time.

State v. Burns, 237 Ariz. 1, 344 P.3d 303, ¶¶ 81–82 (2015) (jurors could have reasonably found defendant killed victim in order to prevent her from reporting sexual assault or kidnapping).

13–1105 First-degree murder—Felony murder.

.110 A death is "in the course of and in furtherance of" a designated felony if the death resulted from any action taken to facilitate the accomplishment of the felony.

State v. Burns, 237 Ariz. 1, 344 P.3d 303, ¶¶ 76–78 (2015) (jurors could have reasonably found defendant killed victim in order to prevent her from reporting sexual assault or kidnapping).

13–1202 Threatening or intimidating.

.050 Actual membership in a criminal street gang is not an element of threatening or intimidating, thus the state need not prove membership in a criminal street gang to support a conviction.

State v. Harm, 236 Ariz. 402, 340 P.3d 1110, ¶¶ 10–14 (Ct. App. 2015) (when arrested for trespassing by black police officer, defendant threatened retaliation by Ayran Brotherhood; defendant was convicted of threatening or intimidating and acquitted of assisting criminal street gang by committing felony offense; court held state's failure to prove defendant was member of Ayran Brotherhood did not mean evidence was insufficient to prove threatening or intimidating).

13–1203 Assault.

.020 Simple assault and disorderly conduct by recklessly displaying or handling firearm are both lesser-included offenses of aggravated assault.

State v. Erivez, 236 Ariz. 472, 341 P.3d 514, ¶¶ 14–21 (Ct. App. 2015) (defendant was charged with aggravated assault; because disorderly conduct by recklessly displaying or handling firearm and simple assault are both lesser-included offenses of aggravated assault, defendant was on notice he could be convicted of either of these lesser-included offenses, thus trial court properly gave jurors instructions on both disorderly conduct and simple assault in addition to instruction on aggravated assault; no error for jurors to find defendant guilty of both disorderly conduct and simple assault).

13–1203(A)(2) Assault—Intentionally placing another in reasonable apprehension.

.010 In order to be guilty of assault under this subsection, the defendant must intentionally place another in reasonable apprehension of imminent physical injury.

State v. Felix, 237 Ariz. 280, 349 P.3d 1117, ¶¶ 29–32 (Ct. App. 2015) (shooter fired nine large-caliber high-velocity bullets in multiple bursts from AK–47 into house; defendant contended, because of her age, 16-month-old girl would not have fear of sounds outside her vision, even sounds of gunshots; mother testified girl started crying when shots were fired; court held this was sufficient to show girl was frightened).

13–1204 Aggravated assault.

.010 Simple assault and disorderly conduct by recklessly displaying or handling firearm are both lesser-included offenses of aggravated assault.

State v. Erivez, 236 Ariz. 472, 341 P.3d 514, ¶¶ 20–21 (Ct. App. 2015) (defendant was charged with aggravated assault; because disorderly conduct by recklessly displaying or handling firearm and simple assault are both lesser-included offenses of aggravated assault, defendant was on notice he could be convicted of either of these lesser-included offenses, thus trial court properly gave jurors instructions on both disorderly conduct and simple assault in addition to instruction on aggravated assault; no error for jurors to find defendant guilty of both disorderly conduct and simple assault).

13–1204(C) Aggravated assault—Peace office engaged in official duties.

.010 For this section to apply, the defendant does not have to know the victim was a peace office engaged in the execution of official duties.

State v. Williams, 236 Ariz. 600, 343 P.3d 470, ¶¶ 6–13 (Ct. App. 2015) (police received report defendant threatened to shoot person and went to defendant's house; as officer approached defendant's house, he identified himself as law enforcement three times, "yell[ing] at the top of his lungs"; defendant fired two shots from her house toward officer; defendant contended trial court should have instructed jurors that state had to prove she knew or should have known victim was peace officer; court held language of statute does not require defendant knew victim was peace office engaged in execution of official duties, thus trial court properly instructed jurors that all state need do was proved beyond reasonable doubt that victim was peace office engaged in the execution of any official duty).

13–1204(E) Aggravated assault—Peace office engaged in official duties.

.010 For this section to apply, the defendant does not have to know the victim was a peace office engaged in the execution of official duties.

State v. Pledger, 236 Ariz. 469, 341 P.3d 511, ¶¶ 6–13 (Ct. App. 2015) (undercover officer and informant pursued defendant's vehicle, and when they found it, officer got out of vehicle, put on bullet-proof vest with word "POLICE" emblazoned on it in yellow letters, and got back into vehicle; defendant then drove by officer's vehicle and pointed gun at officer; defendant contended jurors could not convict him of class 2 felony because state failed to prove he knew undercover officer was engaged in execution of official duties; court held language of statute does not require that defendant knew victim was peace office engaged in execution of official duties).

13–1407(E) Defenses—Not motivated by a sexual interest.

.020 This section provides that it is a defense, but not an affirmative defense, that the defendant was not motivated by a sexual interest, thus if, during a prosecution for molestation of a child or sexual abuse of a minor under 15 years of age, a defendant satisfies the burden of production to raise the defense under this section, then the state must prove beyond a reasonable doubt that the defendant's conduct was motivated by a sexual interest.

State v. Holle, 238 Ariz. 218, 358 P.3d 639, ¶¶ 8–26 (Ct. App. 2015) (court held it was legal error to place burden of proof on Holle to prove his conduct was not motivated by sexual interest, but because there was no rational explanation for defendant's conduct other than he was motivated by sexual interest, any error was harmless), *rev. granted,* CR–15–0348–PR (Mar. 15, 2016).

13–1819 Organized retail theft.

.010 Although this statute contains no language specifying a mental state, because nothing indicates the legislature intended this to be a strict liability crime, the statute requires an intent to deprive.

State v. Veloz, 236 Ariz. 532, 342 P.3d 1272, ¶¶ 3–11 (Ct. App. 2015) (based on this reasoning, court concludes theft is lesser-included offense).

.020 The organized retail theft statute is not vague.

State v. Veloz, 236 Ariz. 532, 342 P.3d 1272, ¶¶ 12–14 (Ct. App. 2015) (defendant contended "organized" was not defined; court noted "organized" is contained only in title of statute and not statute itself; court notes shoplifting does not require use of artifice or device, as is required by this statute, thus offenses are different).

13–2321 Participating in or assisting a criminal street gang.

.010 The crime of assisting a criminal street gang under A.R.S. § 13–2321(B) and the enhancement of the sentence under A.R.S. § 13–714 for an offense committed with intent to promote, further, or assist a criminal street gang have different elements, thus if a defendant has been acquitted of a charge of assisting a criminal street gang, double jeopardy does not preclude the enhancement of the sentence for an offense committed with intent to promote, further, or assist a criminal street gang.

State v. Harm, 236 Ariz. 402, 340 P.3d 1110, ¶¶ 15–20 (Ct. App. 2015) (when arrested for trespassing by black police officer, defendant threatened retaliation by Ayran Brotherhood; jurors found defendant guilty of threatening or intimidating and not guilty of assisting criminal street gang by committing felony offense, but in the aggravation phase found state proved beyond reasonable doubt defendant committed threatening or intimidating with intent to promote or further assist any criminal conduct by criminal street gang; court held double jeopardy did not preclude enhancement of sentence).

13–2508(A) Resisting arrest—Actions against peace officer.

.030 If there is a single uninterrupted event, resisting arrest is a single offense no matter how many officers are involved.

State v. Jurden, 237 Ariz. 423, 352 P.3d 455, ¶¶ 2, 7–21 (Ct. App. 2015) (two officers attempted to arrest defendant for criminal trespass, but he bit and kicked one officer and flailed and pulled his arms away from other officer; court held this was only single offense and vacated second conviction), *rev. granted,* CR–15–0236–PR (Jan. 5, 2016).

13–2904 Disorderly conduct.

.020 Disorderly conduct by recklessly displaying or handling firearm and simple assault are both lesser-included offenses of aggravated assault.

State v. Erivez, 236 Ariz. 472, 341 P.3d 514, ¶¶ 14–21 (Ct. App. 2015) (defendant was charged with aggravated assault; because disorderly conduct by recklessly displaying or handling firearm and simple assault are both lesser-included offenses of aggravated assault, defendant was on notice he could be convicted of either of these lesser-included offenses, thus trial court properly gave jurors instructions on both disorderly conduct and simple assault in addition to instruction on aggravated assault; no error for jurors to find defendant guilty of both disorderly conduct and simple assault).

13–3016(B) Stored oral, wire and electronic communications; agency access; backup preservation; delayed notice; records preservation request—Disclosure by communication service provider.

.010 If the state obtains a search warrant in order to obtain communications held in electronic storage by a communications service provider, the state does not have to give notice to the subscriber or the party.

State v. Reyes, 238 Ariz. 304, 360 P.3d 100, ¶¶ 9–24 (Ct. App. 2015) (court rejected trial court's interpretation that, because the statute provided "without prior notice," state had to give subsequent notice).

13–3212 Child prostitution.

.010 Under the version of this statute that was in effect from July 20, 2011, to July 23, 2014, the person is subject to enhanced punishment under subsection (G) if the person believes the victim is 15 to 17 years of age, even if the victim is an undercover officer who is older than 17 years of age and is only posing as a person 15 to 17 years of age.

State ex rel. Polk v. Campbell (Kraps), 238 Ariz. 109, 357 P.3d 144, ¶¶ 1–19 (Ct. App. 2015) (officers were conducting sting operation where officers posed as 16-year-old runaways willing to engage in sexual conduct for money), *rev. granted,* CR–15–0303–PR (Feb. 9, 2016).

13–3417 Use of wire communication or electronic communication in drug related transactions.

.010 A person who is a principal/seller in a but-sell drug transaction may not be convicted of this statute if the evidence shows that person communicated only with another principal/buyer.

State v. Simmons, 238 Ariz. 503, 363 P.3d 120, ¶¶ 11–23 (Ct. App. 2015) (in three counts, evidence showed only communications were between defendant as seller and undercover agent as buyer, both of whom were thus principals; for other two counts, although there was a third person involved, there was no evidence that defendant used wire or electronic communication devices to communicate with that third person, thus defendant was not guilty of these offenses).

13–3623 Child abuse.

.010 Child abuse is an alternative means statute, also described as a single unified offense, which a person can commit in one of three different ways.

State v. West, 238 Ariz. 482, 362 P.3d 1049, ¶¶ 13–30 (Ct. App. 2015) (defendant was charged with committing child abuse, which could be committed in three ways; court concluded evidence supported defendant's conviction based on all three means of committing that crime, thus defendant was not entitled to unanimous determination on which way she committed it).

13–3917 Time of service of warrant.

.010 The magistrate may direct that a search warrant may be served at night upon a showing of good cause, and for the purposes of this section, night is defined as the period from 10:00 p.m. to 6:30 a.m.

State v. Foncette, 238 Ariz. 42, 356 P.3d 328, ¶¶ 23–27 (Ct. App. 2015) (at 11:30 p.m., officers became aware defendant may be in possession of marijuana; officers followed defendant to hotel and used narcotics dog in hallway, which detected presence of marijuana; officers then obtained night-time search warrant; court held possibility that defendant could destroy evidence justified night-time search warrant).

13–3925(A) Admissibility of evidence obtained as a result of unlawful search or seizure —Suppression of evidence.

.010 Any evidence seized pursuant to a search warrant shall not be suppressed as a result of a violation of Title 13, Chapter 38 except as required by the United States Constitution and the Arizona Constitution.

State v. Foncette, 238 Ariz. 42, 356 P.3d 328, ¶ 2 (Ct. App. 2015) (defendant contended search warrant impermissibly authorized late-night search without good cause in violation of Arizona's statutory restrictions; because defendant alleged only violation of Arizona statute and not violation under United States Constitution or Arizona Constitution, evidence seized was not subject to suppression under exclusionary rule).

13–4032 Appeal by state—When the state has no right to appeal.

.010 The state has the right to appeal only from (1) a pre-trial motion to suppress or dismiss; (2) a mid-trial motion for judgment of acquittal; or (3) a post-trial (a) order granting a new trial, (b) order made after judgment affecting the rights of the state or of a victim, (c) sentence on the grounds that it is illegal, or (d) ruling on a matter of law when the defendant appeals.

State v. Reyes, 238 Ariz. 304, 360 P.3d 100, ¶ 6 (Ct. App. 2015) (state filed motion in limine asking trial court to rule (1) text messages were admissible as business records and (2) it could use defendant's criminal history to establish defendant's identity as author of text messages; trial court denied state's motion; court held trial court's denial of motion in limine was not same as granting of pre-trial motion to suppress, thus court did not have jurisdiction to review that ruling on state's appeal).

State v. Lee (Ray), 238 Ariz. 19, 355 P.3d 621, ¶ 3 (Ct. App. 2015) (because state did not have right to appeal trial court's order that each victim would be required to be interviewed about what happened to other three victims, state had to seek review by petition for special action).

.020 When the state does not have a right to appeal, the state may seek review only by special action, which is discretionary.

State v. Lee (Ray), 238 Ariz. 19, 355 P.3d 621, ¶ 3 (Ct. App. 2015) (because state did not have right to appeal trial court's order that each victim would be required to be interviewed about what happened to other three victims, state had to seek review by petition for special action).

State v. Hansen, 237 Ariz. 61, 345 P.3d 116, ¶¶ 5–9 (Ct. App. 2015) (because state had no remedy by appeal from order granting mistrial, court chose to exercise its special action jurisdiction).

13–4032(2) Appeal by state—Order granting a new trial.

.010 This section gives the state the right to appeal from an order granting a new trial, but it does not give the state the right to appeal from an order granting a mistrial.

State v. Hansen, 237 Ariz. 61, 345 P.3d 116, ¶¶ 5–9 (Ct. App. 2015) (because state had no remedy by appeal, court chose to exercise its special action jurisdiction).

13–4401(19) Definitions. (Victim.)

.020 This statute provides that, if a person is killed or incapacitated, "victim" includes that person's spouse, parent, child, grandparent, or sibling, or any other person related to the second degree by consanguinity or affinity, or any other lawful representative.

Allen v. Sanders, 237 Ariz. 93, 347 P.3d 30, ¶¶ 2–14 (Ct. App. 2015) (KD was child of father and M; AD was child of mother and F; father and mother were now married; court held "affinity" meant relationship between one spouse and other spouse's blood relatives, but did not include one spouse's blood relatives and other spouse's blood relatives; defendant was charged with various crimes arising out of death of AD; court held Victim's Bill of Rights did not preclude defendant from interviewing KD).

13–4419 Victim's conference with prosecuting attorney.

az.2.2.1.a.8.020 The victim's right to consult with the prosecuting attorney does not give the victim's attorney the right to substitute for the prosecutor in restitution proceedings

Lindsay R. v. Cohen (Meyn), 236 Ariz. 565, 343 P.3d 435, ¶ 7 (Ct. App. 2015) (trial court ordered that victim's attorney was not entitled to conduct restitution hearing).

13–4426(A) Sentencing—Victim's right to be heard.

.010 The victim's right to present evidence, information, and opinions does not give the victim's attorney the right to substitute for the prosecutor in restitution proceedings

Lindsay R. v. Cohen (Meyn), 236 Ariz. 565, 343 P.3d 435, ¶ 7 (Ct. App. 2015) (trial court ordered that victim's attorney was not entitled to conduct restitution hearing).

13–4433(A) Victim's right to refuse an interview—Right to refuse.

.030 Because the Arizona Legislature has amended this statute, under that amended language, a person who is victimized by the defendant may not be compelled to give a pretrial defense interview about (1) the offense in question, (2) any offense that occurred on the same occasion, or (3) any offense that occurred on a different occasion, but is filed in the same charging document.

State v. Lee (Ray), 238 Ariz. 19, 355 P.3d 621, ¶¶ 4–7 (Ct. App. 2015) (trial court erred in ordering that each victim would be required to be interviewed about what happened to other three victims).

13–4437(A) Standing to invoke rights; recovery of damages—Victim's standing.

.010 This statute expressly authorizes victims to preserve their rights under the Victim's Bill of Rights by special action proceedings.

State ex rel. Montgomery v. Padilla (Simcox), 238 Ariz. 560, 364 P.3d 479, ¶¶ 17–22 (Ct. App. 2015) (victim's mother, as legal representative for victim, had standing to bring special action to resolve issue of evidence defendant wanted to present against victim).

Lindsay R. v. Cohen (Meyn), 236 Ariz. 565, 343 P.3d 435, ¶ 5 (Ct. App. 2015) (victim had standing to bring special action to resolve issue of extent of victim's involvement in restitution proceedings).

.030 The victim has the right to file pleadings in the criminal case itself, thus the victim or the victim's legal representative, has standing to seek orders from the trial court or to bring a special action mandating that the victim be afforded any of the victim's rights or to challenge an order denying any of the victim's rights.

State ex rel. Montgomery v. Padilla (Simcox), 238 Ariz. 560, 364 P.3d 479, ¶¶ 17–22 (Ct. App. 2015) (victim's mother, as legal representative for victim, had standing to file motions with trial court and to bring special action to resolve issue of evidence defendant wanted to present against victim).

.040 The victim's right to retain private counsel does not give the victim's attorney the right to substitute for the prosecutor in restitution proceedings

Lindsay R. v. Cohen (Meyn), 236 Ariz. 565, 343 P.3d 435, ¶ 8 (Ct. App. 2015) (trial court ordered that victim's attorney was not entitled to conduct restitution hearing).

28–622 Failure to comply with police officer.

.020 This statute gives a person of ordinary intelligence the opportunity to know what is prohibited and provides standards for those who apply the statute, thus the statute does not violate the Due Process Clause of the Fourteenth Amendment.

State v. Burke, 238 Ariz. 322, 360 P.3d 118, ¶¶ 11–17 (Ct. App. 2015) (after defendant allegedly failed to stop at stop sign, police officer pulled him over, asked him for his license and registration, and directed him not to move his vehicle; defendant disobeyed instructions, drove his vehicle to side of roadway, called 911, and eventually exited his vehicle after additional officers arrived on scene, at which point they arrested him).

28–754 Turning movements and required signals.

.020 A driver must signal when turning a vehicle or moving right or left on a roadway in the event the movement might affect other traffic.

State v. Salcido, 238 Ariz. 461, 362 P.3d 508, ¶¶ 3, 14–15 (Ct. App. 2015) (officer testified he was in #2 lane and defendant was in #1 lane and then moved into #2 lane without signaling, cutting him off, and then rode on shoulder over fog line for 10 to 12 seconds before driving back across #2 lane into #1 lane; defendant contended he did not change lanes unsafely and no traffic violation occurred; court rejected defendant's contentions for following reasons: (1) traffic maneuver need not actually affect other traffic; and (2) officer testified defendant changed lanes without signaling and "cut him off," and had been "all over the road").

.030 A police officer's vehicle may constitute "other traffic" under this section.

State v. Salcido, 238 Ariz. 461, 362 P.3d 508, ¶¶ 6–13 (Ct. App. 2015) (officer's vehicle was only other vehicle affected by defendant's driving).

28–1321(A) Implied consent to blood, breath or urine test; suspension of license upon refusal; hearing; review of suspension order—Implied consent to submit to test.

.020 Informing a driver that "Arizona law requires you to submit to and successfully complete tests of breath, blood, or other bodily substance " does not make any subsequent consent involuntary.

State v. Okken, 238 Ariz. 566, 364 P.3d 485, ¶¶ 10–24 (Ct. App. 2015) (after defendant was arrested, officer read him Admin Per Se/Implied Consent Affidavit; defendant agreed to provide breath and blood samples; test results showed BAC result of 0.225).

State v. Valenzuela, 237 Ariz. 307, 350 P.3d 811, ¶¶ 7–21 (Ct. App. 2015) (after defendant was arrested, officer read him Admin Per Se/Implied Consent Affidavit; defendant agreed to provide breath and blood samples; test results showed BAC results of 0.223 and 0.241), *rev. granted,* CR–15–0222–PR (Oct. 27, 2015).

28–1381(A)(3) Driving or actual physical control—Any illicit drug in the person's body.

.060 In order to prove a defendant guilty under § 28–1381(A)(3), the state must only prove the presence of a drug or metabolite in the person's body and does not have to prove the person was in fact impaired, thus the provision of the AMMA, A.R.S. § 36–2802(D), which provides immunity to being "under the influence of marijuana," does not immunize a medical marijuana cardholder from prosecution under § 28–1381(A)(3), but instead affords an affirmative defense if the cardholder shows the marijuana or its metabolite was in a concentration insufficient to cause impairment.

Dobson v. McClennen, 238 Ariz. 389, 361 P.3d 374, ¶¶ 10–20 (2015) (blood tests showed each defendant had marijuana and its impairing metabolite in their body).

Darrah v. McClennen, 236 Ariz. 185, 337 P.3d 550, ¶¶ 1–7 (Ct. App. 2014) (defendant's blood contained 4.0 ng/ml of THC), *vac'd,* 2015WL7759889 (Dec. 1, 2015).

.070 A.R.S. § 28–1381(D) provides a person is not guilty of violating A.R.S. § 28–1381(A)(3) if the person is using a drug as prescribed by a medical practitioner; because under federal law marijuana may not be dispensed under a prescription, a "written certification" signed by a physician pursuant to the AMMA is not a prescription under A.R.S. § 28–1381(D) and thus is not defense to a charge under § 28–1381(A)(3).

Dobson v. McClennen, 238 Ariz. 389, 361 P.3d 374, ¶¶ 18, 22 (2015) (court held any error by trial court in excluding evidence of defendants' medical marijuana cards was harmless in light of stipulation by defendants that they had marijuana in their bodies).

.080 The "metabolite" referenced in this section is limited to any metabolite that is capable of causing impairment, which includes Hydroxy-THC, but not Carboxy-THC.

State v. Werderman, 237 Ariz. 342, 350 P.3d 846, ¶¶ 4–11 (Ct. App. 2015) (court concluded *State ex rel. Montgomery v. Harris (Shilgevorkyan)* did not overrule previously binding case law and thus did not entitle defendant to relief under Rule 32.1(g)).

28–1381(D) Persons under the influence of intoxicating liquor or drugs—Affirmative defense.

.030 This section provides a person is not guilty of violating A.R.S. § 28–1381(A)(3) if the person is using a drug as prescribed by a medical practitioner; because under federal law marijuana may not be dispensed under a prescription, a "written certification" signed by a physician pursuant to the AMMA is not a prescription under A.R.S. § 28–1381(D) and thus is not defense to a charge under § 28–1381(A)(3).

Dobson v. McClennen, 238 Ariz. 389, 361 P.3d 374, ¶¶ 18, 22 (2015) (court held any error by trial court in excluding evidence of defendants' medical marijuana cards was harmless in light of stipulation by defendants that they had marijuana in their bodies).